



BULKY DOCUMENTS

(Exceeds 100 pages)

Proceeding/Serial No: **91189474**

Filed: 5/16/2011

Title: **DULY EXECUTED TRANSCRIPTS (VOLS. I
AND II) AND EXHIBITS OF OPPOSER'S
TESTIMONY**

Part **1** of **1**

91189474



BULKY EXHIBITS

Proceeding/Serial No: 91189474

Filed: 5/16/2011

Title: *DULY EXECUTED TRANSCRIPTS
(VOLS. I AND II) AND EXHIBITS OF
OPPOSER'S TESTIMONY*

EXHIBIT 3: 1 CD

91189474

JACK F. SCHERER, P.C.

ATTORNEY AT LAW

99 PARK AVENUE
3RD FLOOR
NEW YORK, N.Y. 10016

TEL (212) 421-7140

FAX (917) 591-4763

EMAIL: jscherer@jfsny.com

May 13, 2011

OF COUNSEL
AHMED MASSOUD
LISA PASHKOFF

Trademark Trial and Appeal Board
Madison East
Concourse Level Room C 55
600 Dulaney Street
Alexandria, VA 22314

Re: Opposition No. 91189474

Gentlemen:

Enclosed herewith, please find the duly executed transcripts (Vols. I and II) and exhibits of Opposer's testimony. Attached thereto are the respective Certificates of Service. Also, please find duly executed Stipulation for the filing of Volume I, *unc pro tunc*.

Very truly yours,

Jack F. Scherer

TRADEMARK PROCESS
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2011 MAY 16
U.S. PATENT & TRADEMARK OFFICE

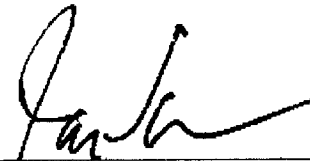
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------|---|--------------------------|
| Cheryl Cooley, |) | |
| |) | |
| Opposer, |) | Opposition No.: 91189474 |
| |) | |
| v. |) | Mark: KLYMAXX |
| |) | |
| Bernadette Cooper and |) | Serial No.: 77/571,759 |
| Joyce Irby |) | |
| |) | |
| Applicants. |) | |

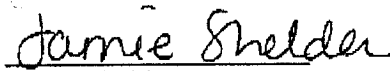
STIPULATION

It is hereby stipulated and agreed by and between the attorneys for the respective parties that the transcript and exhibits of the trial testimony of Opposer, Cheryl Cooley, taken on November 1, 2010, be filed *nunc pro tunc*.

Dated: April 25, 2011



Jack F. Scherer, Esq.
Attorney for Opposer



Jamie Shelden, Esq.
Attorney for Applicants

2011 MAY 16 11:33:58
U.S. PATENT & TRADEMARK OFFICE
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TRADEMARK PROCESS

In The Matter Of **ORIGINAL**

*CHERYL COOLEY v.
BERNARDETTE COOPER and JOYCE IRBY*

*CHERYL COOLEY
November 1, 2010*

*RAYVID REPORTING SERVICE, INC.
225 Varick Street - 10th Floor
New York, NY 10014
PH: 212-267-3877 / FAX: 212-692-9171*

COOLEY, CHERYL - Vol. 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHERYL COOLEY,

Opposer,

VS.

BERNARDETTE COOPER and JOYCE
IRBY,

Applicants.

ORIGINAL

Case No. 91189474

DEPOSITION OF CHERYL COOLEY

MONDAY, NOVEMBER 1, 2010

10:16 a.m.

REPORTED BY: GRACE CHUNG, CSR No. 6246
Registered Merit Reporter
Certified Realtime Reporter

1 Deposition of CHERYL COOLEY, taken on
2 behalf of Opposer, at 180 North Fair Oaks Avenue,
3 Pasadena, California, commencing at 10:16 a.m.,
4 Monday, November 1, 2010, before GRACE CHUNG, CSR No.
5 6246, RMR, CRR, CLR.

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10 A P P E A R A N C E S

11

12 FOR OPPOSER:

13

14 LAW OFFICES OF JACK F. SCHERER
15 BY: JACK F. SCHERER, ESQ.
16 99 Park Avenue
17 Third Floor
18 New York, New York 10016
19 (212) 421-7140
20 jscherer@jfsny.com

17

18 FOR APPLICANTS:

19

20 LAW OFFICES OF JAMIE SHELDEN
21 BY: JAMIE SHELDEN, ESQ.
22 1760 Suite F
23 PMB No. 220
24 Airline Highway
25 Hollister, California 95023
26 (Not Present)

23

24

25

| | | | |
|---|----------------|-------------|------|
| 1 | I N D E X | | |
| 2 | WITNESS | EXAMINATION | PAGE |
| 3 | CHERYL COOLEY | | |
| 4 | BY MR. SCHERER | | 5 |

| | | | |
|----|-----------------|---|------|
| 6 | E X H I B I T S | | |
| 7 | NO. | DESCRIPTION | PAGE |
| 8 | Exhibit 1 | Taking trial testimony pursuant to notice | 4 |
| 9 | Exhibit 1-A | E-mail dated October 20, 2010 | 4 |
| 10 | Exhibit 1-B | E-mail dated October 29, 2010 | 4 |
| 11 | Exhibit 2 | Notice of Opposition | 5 |
| 12 | Exhibit 3 | Letter dated February 26, 2009, from Lynn Malsby, with attachment, and CD | 6 |
| 13 | | | |
| 14 | Exhibit 4 | Answer to Notice of Opposition | 7 |
| 15 | Exhibit 5 | Answers to Applicants' Request for Admissions | 8 |
| 16 | | | |
| 17 | Exhibit 6 | Answers to Applicants' First Set of Interrogatories | 8 |
| 18 | Exhibit 7 | Answer to First Interrogatories | 9 |
| 19 | Exhibit 8 | Letter from Higgins & Dubner dated May 14th, 2003 | 11 |
| 20 | | | |
| 21 | Exhibit 9 | Letter from Lynn, Lorena, Bernadette | 12 |
| 22 | Exhibit 10 | Letter dated August 10, 2007 | 13 |
| 23 | Exhibit 11 | Letter from Just Trademarks dated September 23, 2008 | 14 |
| 24 | | | |
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PASADENA, CALIFORNIA

MONDAY, NOVEMBER 1, 2010

10:16 a.m.

CHERYL COOLEY,

having been first duly sworn or affirmed,

was examined and testified as follows:

MR. SCHERER: This is taking trial
testimony pursuant to notice, and I would like to have
the notice of taking trial testimony marked as
Exhibit -- as Opposer's 1.

(Opposer's Exhibit 1 was marked for
identification by the reporter and is
attached hereto.)

MR. SCHERER: And subsequent to the serving
of the notice upon applicants' attorney, there was a
series of e-mails -- one dated October 20th, 2010, the
other dated October 29th, 2010 -- notifying the
applicants' attorney of the date, time, and place of
the deposition. And I would like to have those marked
as Exhibits 1 -- as Opposer's 1-A and 1-B.

(Opposer's Exhibit 1-A and 1-B were marked
for identification by the reporter and are
attached hereto.)

1 EXAMINATION

2 BY MR. SCHERER:

3 Q. And, Ms. Cooley, have we filed -- have you
4 filed a notice of opposition to the applicants'
5 application for trademark for the name "Klymaxx"?

6 A. Yes.

7 Q. I will show you the Notice of Opposition
8 and ask you, is that the document reflecting your
9 opposition to applicants' trademark application?

10 A. Yes, yes.

11 MR. SCHERER: And can we have this marked
12 as Opposer's 2.

13 (Opposer's Exhibit 2 was marked for
14 identification by the reporter and is
15 attached hereto.)

16 BY MR. SCHERER:

17 Q. Looking at Opposer's 2, which has already
18 been marked in evidence, are all the statements
19 contained in that document true?

20 A. Yes, they yes. They are.

21 Q. I direct your attention to paragraph 11 --
22 I'm sorry. Withdrawn.

23 I direct your attention to paragraph 13 in
24 Opposer's 2, wherein it states that "Stewart, Grider,
25 and Malsby join with Opposer in the within

1 opposition."

2 I am asking you specifically, is that
3 statement true?

4 A. Yes, it is.

5 Q. Okay. And pursuant to that, did you
6 receive a letter from Malsby in which she expresses
7 her desire to join in the application, in your
8 opposition?

9 A. Yes.

10 Q. Now, I show you a document and ask you
11 whether or not this is the letter that you received
12 from Malsby which joins in your opposition to the
13 application.

14 A. Yes, it is.

15 MR. SCHERER: Okay. Can we have this
16 marked as Opposer's 3.

17 (Opposer's Exhibit 3 was marked for
18 identification by the reporter and is
19 attached hereto.)

20 MR. SCHERER: For the record, Opposer's 3
21 consists of a letter, a two-page letter with
22 attachments, 15 attachments, and a CD. That will be
23 part of 3.

24 Q. And, to your knowledge, did the applicants
25 file an answer to the Notice of Opposition?

1 A. Yes.

2 Q. Okay. I will show you a document which
3 is the -- is this the answer to the Notice of
4 Opposition?

5 A. Yes, it is.

6 MR. SCHERER: And I would like to have this
7 marked as 4, please.

8 (Opposer's Exhibit 4 was marked for
9 identification by the reporter and is
10 attached hereto.)

11 BY MR. SCHERER:

12 Q. Did you receive a request for admissions
13 from the applicants with reference to this -- to their
14 trademark application?

15 A. Yes.

16 Q. I will show you the Answers to Applicants'
17 Request for Admissions and ask you whether or not the
18 statements contained in there are true.

19 A. Yes, they are.

20 Q. Okay. Just look through it again, just to
21 refresh your recollection, please, and make sure that
22 they are true. Just make sure that you remember what
23 you said and that all the statements contained therein
24 are true.

25 Could I have the Answers to Applicants'

1 Request for Admissions marked as Opposer's 5.

2 (Opposer's Exhibit 5 was marked for
3 identification by the reporter and is
4 attached hereto.)

5 BY MR. SCHERER:

6 Q. Did there come a point in time where we
7 received a request for interrogatories from the
8 applicants?

9 A. Yes.

10 Q. And I show you a document which is
11 captioned "Answers to Applicants' First Set of
12 Interrogatories." And are the Answers to Applicants'
13 First Set of Interrogatories true?

14 A. Yes.

15 MR. SCHERER: Can we have that marked as
16 Opposer's 6, please.

17 (Opposer's Exhibit 6 was marked for
18 identification by the reporter and is
19 attached hereto.)

20 BY MR. SCHERER:

21 Q. And did there come a time when we served
22 upon the applicants a request for opposer's first set
23 of interrogatories?

24 A. Yes.

25 Q. And I will show you a document which is

1 captioned "Answer to First Interrogatories."

2 And is this their response, "their" being
3 applicants' response?

4 A. Yes.

5 MR. SCHERER: Okay. May we have that
6 marked as Exhibit 7, please, Opposer's 7.

7 (Opposer's Exhibit 7 was marked for
8 identification by the reporter and is
9 attached hereto.)

10 BY MR. SCHERER:

11 Q. Can you please look at Opposer's 2, which
12 has been designated as Opposer's 2.

13 With reference to Opposer's 2, we have
14 stated that the applicants abandoned Klymaxx.

15 A. True.

16 Q. Okay. Can you tell us the circumstances of
17 their abandonment of Klymaxx?

18 A. In approximately 1987, Bernadette Cooper no
19 longer performed with the band, went on to do a solo
20 career. And in approximately 1988, Joyce Irby was no
21 longer performing with the band, had stopped
22 performing with the band, going on -- traveling with
23 the band, and had pursued her own solo career.

24 Q. Okay. So both of the applicants abandoned
25 Klymaxx, the performing group, to form a solo career;

1 is that correct?

2 A. That's correct. That's true.

3 Q. When they abandoned the -- when they
4 abandoned Klymaxx, did they give any indication that
5 they wanted to return to Klymaxx?

6 A. No.

7 Q. Okay. When did you -- did there come a
8 time when you started performing as Klymaxx featuring
9 Cheryl Cooley in 2003?

10 A. Yes.

11 Q. And when was that, to the best of your
12 recollection?

13 A. The first performance was May 17th, 2003.

14 Q. Okay. And have you continued to perform as
15 Klymaxx featuring Cheryl Cooley since that date?

16 A. Yes.

17 Q. To the date hereof?

18 A. Yes, that's correct.

19 Q. Okay. Now, in May of 2003, did you receive
20 a cease and desist letter from a set of attorneys
21 called Higgins, H-I-G-G-I-N-S, and Dubner,
22 D-U-B-N-E-R?

23 A. Yes.

24 Q. Okay. I show you a letter on the
25 letterhead of Higgins & Dubner dated May 14th, 2003,

1 and ask you whether or not this is the cease and
2 desist letter you received from them.

3 A. Yes.

4 MR. SCHERER: I would like to have this
5 marked as Opposer's 8.

6 (Opposer's Exhibit 8 was marked for
7 identification by the reporter and is
8 attached hereto.)

9 BY MR. SCHERER:

10 Q. Subsequent to receiving the letter from
11 Higgins & Dubner -- withdrawn.

12 If you look at the last page of the letter,
13 which is page 4 -- I'm sorry, withdrawn.

14 At the time that this letter was sent to
15 you by Higgins & Dubner, who were Higgins & Dubner
16 representing, if you know?

17 A. That I know of, Joyce Irby.

18 Q. Joyce Irby, okay.

19 Do you know whether or not they were
20 representing Bernadette Cooper?

21 A. Bernadette Cooper was aware of the letter.

22 Q. Okay. If you look at the last page of the
23 letter, which is page 4, you will see that there is cc
24 copies to Joyce Irby and Bernadette Cooper and Lorena
25 Stewart, Lynn Malsby, and Ron Sweeny.

1 Ron Sweeny was their attorney at that time?

2 A. Yes.

3 Q. Okay. Subsequent to that letter, did
4 you -- in or about December 27th, 2005, did Bernadette
5 Cooper and Joyce Irby have knowledge, actual
6 knowledge, that you were performing as Klymaxx
7 featuring Cheryl Cooley?

8 A. Yes.

9 Q. Okay. Now, I show you an e-mail dated
10 December 27th, 2005, which appears to be from Lorena
11 and Bernadette. And the body of the e-mail -- in the
12 body of the e-mail, Lynn, Lorena, and Bernadette say
13 that, quote, "I am writing on behalf of Bernadette
14 Cooper, Lorena, Stewart, Joyce Irby, and myself."

15 Okay. Can we have this -- is this the
16 e-mail by which they demonstrate their knowledge that
17 you were performing as Klymaxx featuring Cheryl
18 Cooley?

19 A. Yes.

20 MR. SCHERER: Okay. Can I have this marked
21 as 9.

22 (Opposer's Exhibit 9 was marked for
23 identification by the reporter and is
24 attached hereto.)

25 BY MR. SCHERER:

1 Q. Do you know whether or not they have
2 performed as Klymaxx in 2010?

3 A. Yes, they have.

4 Q. Okay. Do you know whether or not -- do you
5 have any idea as to the number of dates?

6 A. No, I don't.


7 Q. Okay. That's it pretty much.

8 (Proceedings adjourned at 10:34 a.m.)
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1 STATE OF CALIFORNIA)
 2) ss.
 3 COUNTY OF LOS ANGELES)
 4

5 I, CHERYL COOLEY, hereby certify under
 6 penalty of perjury under the laws of the State of
 7 California that the foregoing is true and correct.

8 Executed this 25th day of March,
 9 2010, at Los Angeles, California.
 10

11 
 12 _____

13 CHERYL COOLEY
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Los Angeles

SS.

On

03/25/2011

before me,

F. Jackson, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

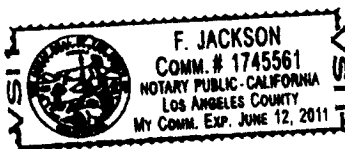
Cheryl Cooley

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Deposition

Document Date:

November 1, 2010

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

Cheryl Cooley

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

self

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

1 STATE OF CALIFORNIA)
 2) SS.
 3 COUNTY OF LOS ANGELES)
 4

5 I, GRACE CHUNG, RMR, CRR, CSR No. 6246, a
 6 Certified Shorthand Reporter in and for the County of
 7 Los Angeles, the State of California, do hereby
 8 certify:

9 That, prior to being examined, the witness
 10 named in the foregoing deposition was by me duly sworn
 11 to testify the truth, the whole truth, and nothing but
 12 the truth;

13 That said deposition was taken down by me
 14 in shorthand at the time and place therein named, and
 15 thereafter reduced to typewriting by computer-aided
 16 transcription under my direction.

17 I further certify that I am not interested
 18 in the event of the action.

19 In witness whereof, I have hereunto subscribed my
 20 name.

21 Dated: November 10, 2010

22
 23
 24
 25


 GRACE CHUNG, CSR NO. 6246
 RMR, CRR, CLR

ERRATA SHEET:

Case Name: CHERYL COOLEY v. BERNARDETTE COOPER and
JOYCE IRBY

Dep. Date: November 1, 2010

Deponent: CHERYL COOLEY

CORRECTIONS:

[illegible]

Subscribed and sworn to before

me this ____ day of _____, 20____.

CHERYL COOLEY



| | | | |
|---|---|---|--|
| <p>A</p> <p>abandoned 9:14,24 10:3,4</p> <p>abandonment 9:17 14:19</p> <p>action 17:17</p> <p>actual 12:5 13:2,7</p> <p>adjourned 15:8</p> <p>admissions 3:16 7:12 7:17 8:1</p> <p>affirmed 4:6</p> <p>Airline 2:21</p> <p>Angeles 16:2 17:2,6</p> <p>answer 3:14,18 6:25 7:3 9:1</p> <p>Answers 3:15,17 7:16 7:25 8:11,12</p> <p>APPEAL 1:2</p> <p>appears 12:10</p> <p>applicants 1:8 2:18 3:15,17 4:16,19 5:4,9 6:24 7:13,16,25 8:8 8:11,12,22 9:3,14,24 13:2 14:18,18</p> <p>application 5:5,9 6:7 6:13 7:14</p> <p>approximately 9:18 9:20 14:10</p> <p>asking 6:2</p> <p>attached 4:14,24 5:15 6:19 7:10 8:4,19 9:9 11:8 12:24 13:15 14:4</p> <p>attachment 3:13</p> <p>attachments 6:22,22</p> <p>attempted 14:18</p> <p>attention 5:21,23</p> <p>attorney 4:16,19 12:1</p> <p>attorneys 10:20</p> <p>August 3:22 13:1,6 14:12</p> <p>Avenue 2:2,14</p> <p>aware 11:21</p> <p>a.m 1:13 2:3 4:3 15:8</p> | <p>B</p> <p>B 3:6</p> <p>band 9:19,21,22,23</p> <p>behalf 2:2 12:13</p> <p>Bernadette 3:21 9:18 11:20,21,24 12:4,11 12:12,13</p> <p>BERNARDETTE 1:7</p> <p>best 10:11</p> <p>bit 14:11</p> <p>BOARD 1:2</p> <p>body 12:11,12</p> <p>C</p> <p>C 2:10</p> <p>California 2:3,21 4:1 16:1,6,8 17:1,6</p> <p>called 10:21 13:18</p> <p>captioned 8:11 9:1</p> <p>career 9:20,23,25</p> <p>Case 1:6</p> <p>cc 11:23</p> <p>CD 3:13 6:22</p> <p>cease 10:20 11:1 13:18 13:22</p> <p>ceased 14:11</p> <p>Certified 1:19 17:5</p> <p>certify 16:4 17:7,16</p> <p>Cheryl 1:4,11 2:1 3:3 4:5 10:9,15 12:7,17 13:4,9 16:4,12</p> <p>CHUNG 1:18 2:4 17:4 17:23</p> <p>circumstances 9:16</p> <p>CLR 2:5 17:24</p> <p>come 8:6,21 10:7</p> <p>commencing 2:3</p> <p>computer-aided 17:14</p> <p>consists 6:21</p> <p>contained 5:19 7:18 7:23</p> <p>continued 10:14 14:9 14:21</p> <p>Cooley 1:4,11 2:1 3:3 4:5 5:3 10:9,15 12:7</p> | <p>12:18 13:4,9 16:4,12</p> <p>Cooper 1:7 9:18 11:20 11:21,24 12:5,14</p> <p>copies 11:24</p> <p>copy 13:21</p> <p>correct 10:1,2,18 16:6</p> <p>County 16:2 17:2,5</p> <p>CRR 2:5 17:4,24</p> <p>CSR 1:18 2:4 17:4,23</p> <p>D</p> <p>D 3:1</p> <p>date 4:19 10:15,17</p> <p>dated 3:9,10,12,20,22 3:23 4:17,18 10:25 12:9 13:6 17:20</p> <p>dates 15:5</p> <p>day 16:7</p> <p>December 12:4,10</p> <p>demonstrate 12:16</p> <p>deposition 1:11 2:1 4:20 17:9,12</p> <p>DESCRIPTION 3:7</p> <p>designated 9:12</p> <p>desire 6:7</p> <p>desist 10:20 11:2 13:18,22</p> <p>direct 5:21,23</p> <p>direction 17:15</p> <p>document 5:8,19 6:10 7:2 8:10,25</p> <p>Dubner 3:19 10:21,25 11:11,15,15</p> <p>duly 4:6 17:9</p> <p>D-U-B-N-E-R 10:22</p> <p>E</p> <p>E 2:10,10 3:1,6</p> <p>ESQ 2:14,19</p> <p>event 17:17</p> <p>evidence 5:18</p> <p>EXAMINATION 3:2 5:1</p> <p>examined 4:7 17:8</p> <p>Executed 16:7</p> <p>Exhibit 3:8,9,10,11,12</p> | <p>3:14,15,17,18,19,21 3:22,23 4:11,12,22 5:13 6:17 7:8 8:2,17 9:6,7 11:6 12:22 13:13 14:2</p> <p>Exhibits 4:21</p> <p>expresses 6:6</p> <p>e-mail 3:9,10 12:9,11 12:12,16 13:6,7</p> <p>e-mails 4:17</p> <p>F</p> <p>F 2:13,14,20</p> <p>Fair 2:2</p> <p>featuring 10:8,15 12:7 12:17 13:3,8</p> <p>February 3:12</p> <p>file 6:25</p> <p>filed 5:3,4</p> <p>first 3:17,18 4:6 8:11 8:13,22 9:1 10:13 14:17,17,18</p> <p>Floor 2:15</p> <p>follows 4:7</p> <p>foregoing 16:6 17:9</p> <p>form 9:25</p> <p>further 17:16</p> <p>G</p> <p>give 10:4</p> <p>going 9:22</p> <p>GRACE 1:18 2:4 17:4 17:23</p> <p>Grider 5:24</p> <p>group 9:25</p> <p>H</p> <p>H 3:6</p> <p>hereof 10:17</p> <p>hereto 4:14,24 5:15 6:19 7:10 8:4,19 9:9 11:8 12:24 13:15 14:4</p> <p>hereunto 17:18</p> <p>Higgins 3:19 10:21,25 11:11,15,15</p> |
|---|---|---|--|

Highway 2:21
Hollister 2:21
H-I-G-G-I-N-S 10:21

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idea 15:5
identification 4:13,23
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J

JACK 2:13,14
JAMIE 2:19,19
join 5:25 6:7
joins 6:12
Joyce 1:7 9:20 11:17
 11:18,24 12:5,14
jscherer@jfsny.com
 2:16
July 14:15

K

kind 14:11
Klymaxx 5:5 9:14,17
 9:25 10:4,5,8,15 12:6
 12:17 13:3,8 14:7,10
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CERTIFICATE OF SERVICE

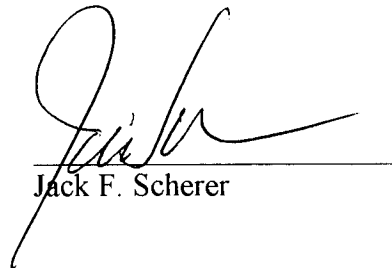
I hereby certify that a true copy of the following:

Transcript and Exhibits of the Deposition of Opposer, Cheryl Cooley

was served upon Applicants on or about March 10, 2011, by delivering a copy of same to FedEx for delivery to:

Jamie Sheldon. Esq.
1760 Suite F
PMB No. 220
Airline Highway
Hollister, CA 95023

Dated: May 13, 2011



Jack F. Scherer

VOLUME I EXHIBITS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CHERYL COOLEY,

Opposer,

Opposition No.: 91189474

BERNADETTE COOPER and JOYCE IRBY

Applicants.
-----X

NOTICE OF TAKING TRIAL TESTIMONY

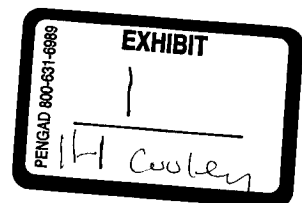
TO: Jamie Shelden, Esq.
1760 Suite F
PMB No. 220
Airline Highway
Hollister, CA 95023

YOU ARE HEREBY NOTIFIED that I shall, on behalf of Cheryl Cooley, Opposer, commence the taking of testimony upon oral examination, at 10:00 in the forenoon of November 1, 2010, at Marriott Courtyard, Old Pasadena, CA. in the above action, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice of the United States Patent and Trademark Office, before a Notary Public, duly authorized to administer oaths in the State of California, or any other qualified Notary Public.

The name and address of the witness whose testimony will be taken is:

CHERYL COOLEY, Opposer
5807 Pickford Street
Los Angeles, CA 90019

and such other witnesses as may be called.



The examination will continue from day to day until completed.

You are invited to attend for the purpose of cross examination.


Dated: October 20, 2010
New York, New York



Jack F. Scherer

CERTIFICATE OF SERVICE,

A copy of the within Notice of Taking Trial Testimony has been duly served by first class mail on the attorney for the Applicants, Jamie Shelden, Esq., 1760 Suite F, PMB 220, Airline Highway, Hollister, CA 95023, this 20th day of October, 2010.



Jack F. Scherer

Jack Scherer

From: Jack Scherer [jscherer@jfsny.com]
Sent: Wednesday, October 20, 2010 12:26 PM
To: 'Jamie Shelden'
Subject: Cheryl Cooley, Opposer

Jamie:

On August 25, 2010, the Trademark Trial and Appeal Board mailed its decision concerning your application to dismiss and Opposer's response and cross application for leave to take Opposer's trial testimony. The decision granted Opposer time in which to take Opposer's trial testimony as well as permitting Opposer to serve pretrial disclosures upon Applicants within 30 days of the date of mailing of the decision. Opposer's Second Set of Interrogatories ("Second Set") was mailed to you on Sept 14, 2010, well within the 30 day period. Applicants' response to the Second Set is unacceptable, in light of the August 25 decision.

I will be taking the trial testimony of Opposer and such other witnesses as may be called starting at 10 a.m. and continuing. The place of the exam is the Marriott Courtyard in Old Pasadena, California. You are welcome to attend. I am mailing today, the Notice of Taking Trial Testimony.

Jack



10/29/2010

Jack Scherer

From: Jack Scherer [jscherer@jfsny.com]

Sent: Friday, October 29, 2010 12:17 PM

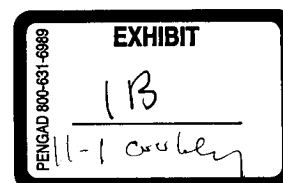
To: 'Jamie Shelden'

Jamie:

Follow up to my earlier e-mail and the Notice of Taking Trial Testimony, please be advised that when you arrive at the Marriott Courtyard, 180 North Fair Oaks, Pasadena, please ask, at reception, for my room number, as I will be taking the testimony of Cheryl Cooley in my hotel room.

If you have any questions, please call.

Jack



10/29/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CHERYL COOLEY,

Opposer,

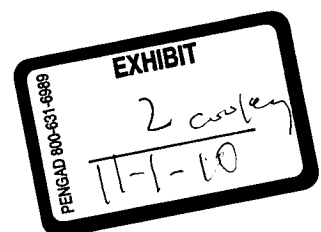
BERNADETTE COOPER and JOYCE IRBY

Applicants.
-----X

NOTICE OF OPPOSITION

In the matter of the application for registration of an alleged trademark
KLYMAXX for entertainment, namely, live performance by a musical band in class 41,
Serial No. 77571759 filed September 17, 2008, by JAMIE SHELDEN, an attorney with
offices now at 201A McCray Street, Suite 306, Hollister, CA 95023-4094, which was
published in the Official Gazette of February 24, 2009, the undersigned CHERYL
COOLEY residing at 5807 Pickford Street, Los Angeles, CA 90019- 4936 believes that
she would be damaged by such registration and hereby gives notice of her intention to
oppose and hereby opposes the registration of said alleged trademark.

Opposer hereby appoints Jack F. Scherer, a member of the Bar of the State of
New York, with offices at 99 Park Avenue, 3rd Floor, New York NY 10016, her attorney
with full power of substitution and revocation for the purpose of opposing such



registration and taking all action required in said proceedings, Please direct all correspondence in this case to Jack F. Scherer at the above identified address.

As grounds for the opposition, it is alleged that:

- D/k/c
1. Opposer, Cheryl Cooley, is, and for many years has been, performing as Klymaxx, a live musical band.
 2. As of January 1, 1981, the live performing band known as Klymaxx which then consisted of Opposer, Lorena Stewart ("Stewart"), Lynn Malsby ("Malsby"), Bernadette Cooper ("Cooper"), one of the Applicants, and three (3) other individuals executed a recording agreement with Solar Records, Inc ("Solar"). The seven, including Opposer, were then known as Klymaxx.
 3. Thereafter, as of July 16, 1985, Opposer, the Applicants, Cooper and Joyce Irby ("Irby"), Stewart, Malsby, Robin Grider ("Grider") and one (1) other executed another recording agreement with Solar, distributed by MCA Records ("MCA"). The six were then known as Klymaxx.
 4. Opposer, Cooper, Malsby, and Stewart signed both Solar agreements, while Irby and Grider only executed the second Solar agreement.
 5. In 1988, both Applicants abandoned Klymaxx to pursue solo musical careers, Cooper with MCA Records, and Irby with Motown Records.
 6. Upon the abandonment of Klymaxx by Applicants, Klymaxx consisted of original members, Opposer and Stewart, and Grider, who executed the second Solar agreement.
- D/k/c
- D/k/c
- D/k/c
- D that Opposer will be denied to register

- D/k/c
7. In 1990, Klymaxx, which then consisted of Opposer, Stewart, and Grider, delivered the Klymaxx album entitled "The Maxx Is Back" distributed by MCA.
- D/k/c
8. For approximately 10 years, Klymaxx ceased performing.
- D
9. Opposer auditioned musicians in July and August, 2002, and started rehearsing in September, 2002. Opposer performed as Klymaxx on May 17, 2003, in Long Beach, California.
- D
10. Since May 17, 2003, Opposer performed as Klymaxx in California, Arizona, and Florida; and since June 3, 2004, Opposer has performed as "Klymaxx featuring original guitarist Cheryl Cooley" in California, Arizona, Nevada, Pennsylvania, Texas, Alabama, and Tennessee.
11. Opposer is presently performing as "Klymaxx featuring original guitarist Cheryl Cooley".
12. Upon information and belief, more than 15 years after Applicants abandonment of Klymaxx, Applicants' first performance as Klymaxx was on or after November 21, 2003, 6 months after Opposer's first use of Klymaxx.
13. Stewart, Grider and Malsby join with Opposer in the within opposition.
14. Until 2004, none of the original members of Klymaxx had applied to register Klymaxx until Opposer applied under Serial Number 76/498106 which was refused because of the likelihood of confusion with the mark KLIMAX in U.S. registration NO. 2726589.

Applicants are not now the owner of the alleged trademark sought to be registered and have not now, and never have had the exclusive use thereof.

The term Klymaxx is not now, and never has been exclusively identified with the Applicants, and the mark sought to be registered does not distinguish the Applicants from Opposer for entertainment, namely live performances by a musical band known as Klymaxx. Malsby, Grider, and Stewart join with Opposer in the within opposition.

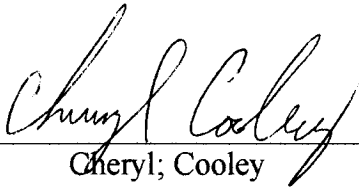
By reason of the foregoing facts, Opposer, Malsby, Grider and Stewart will be irreparably damaged by the registration of Applicant's alleged mark and Opposer believes that such registration would deceive the trade and purchasing public in general and cause confusion or mistake or deception.

WHEREFORE, Opposer prays that this opposition be sustained, that Serial No.77571759 be rejected and that registration of the mark shown for entertainment, namely live performances by a musical band be refused and denied.


CHERYL COOLEY

Dated: MARCH 20, 2009

Cheryl Cooley declares that: she has read the foregoing Notice of Opposition and knows the contents thereof, that the same is true to her own knowledge except as to those matters therein stated to be alleged on information and belief, and, as to those matters, she believes them to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom


Cheryl Cooley

Dated: MARCH 20, 2009

In the United States Patent and Trademark Office

Alleged Mark: Klymaxx

Serial No. 77571759

Published: February 24, 2009

Applicants: Bernadette Cooper and Joyce Irby

Opposer: Cheryl Cooper

Certificate of Mailing

I hereby certify that this Certificate, the Letter of Transmittal of even date, and the Notice of Opposition with verification are being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelop addressed to Jamie Shelden, the attorney for Applicants, 201A McCray Street, Suite 306, Hollister, CA 95203-4094 this 23rd day of March, 2009.



Jack F. Scherer

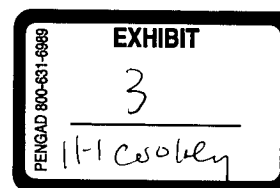
LYNN MALSBY

3757 Valleybrink Rd.
Los Angeles, CA 90039
323-666-7272

February 26, 2009

United States Patent and Trademark Office

Reference: Trademark serial number 77571759
Klymaxx



To whom it may concern,

I am writing on behalf of myself, Lorena Stewart (Hardimon) and Robbin Grider; all original members of Solar/MCA recording artist, "Klymaxx" along with Cheryl Cooley, Joyce Irby and Bernadette Cooper. We recorded and toured together for a decade during the 1980's - 90's.

It has been brought to our attention that Ms. Cooper and Ms. Irby have applied as joint owners for a trademark of the name "Klymaxx" with a goods and services type of Entertainment, namely live performances by a musical band. This was published two days ago, on 24 February, 2009. We vehemently oppose this claim and offer the following as justification:

First Use on trademark number 77571759 is indicated as 9/30/03. Both Mrs. Stewart and Ms. Malsby worked with, rehearsed with, traveled with and financially supported the endeavors of Klymaxx both before and after that date.

Ms. Cooper and Ms. Irby are free individuals and as they are no longer under contract with Klymaxx (Ms. Cooper quit the band in circa 1987 and Ms. Irby was fired by the remaining members in circa 1988), we question their proposed "ownership" of this business name.

We have tried to handle this negotiation independently. When we first discovered that this trademark had been filed, we requested a meeting with Ms. Cooper and Ms. Irby. While they responded to our communication, they have not made themselves available for said meeting. The initial meeting request was made to them in October of 2008, with a request that this meeting occur within 60 days. The timing of the trademark process leaves us with no better option than to officially oppose. Their reluctance to meet indicates to us their willingness to simply allow this official statute of time to expire, leaving those of us opposed to this trademark with no option.

As samples demonstrative of our involvement, I am enclosing the following (this should be read as a sampling. There are numerous other contracts and invoices/receipts in our possession)

One DVD - VH1 "Bands Reunited" filmed late November 2003, first aired February 2004 with participation from all members except Ms. Grider who we were not able to locate at the time.

Invoice for Rentals of stage clothing for VH1 taping from LSO Design in Woodland Hills, CA (11/13/03)

National Car Rental (11/16/03) - transportation in Atlanta for rehearsals (Bernadette, Lorena, Lynn)

Advertisement from LA Weekly, November 21-27, 2003 - Klymaxx at the Roxy

Universal Attractions Agency Statement dated 5/21/04 - Atlanta GA Gig, 8/7/04

Artist Engagement Contract dated 7/9/04 – Baton Rouge Gig, 8/8/04

Load-In docket from the Perkins gigs – August 5, 6 & 8, 2004

Gas receipt for tour bus – 8/9/04 – during return to Atlanta from Baton Rouge

Flyer from Mississippi Perkins gig, 8/6/04

Receipt for advance paid to Joyce Irby 7/29/2004

Boarding Pass, Malsby, return from Atlanta 8/9/04

Given the above considerations, we believe it is in everyone's best interests to state the following. We believe that Ms. Cooper and Ms. Irby are free to either:

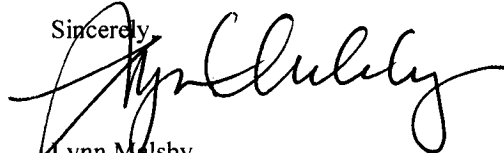
Negotiate with the other members of Klymaxx to have all six (6) original members once again trademark the name

or

Tour as Ms. Cooper and/or Ms. Irby formerly of Klymaxx

We humbly request that you deny this Trademark application, as it is an attempt to trade off the good name of Klymaxx, established by six (6) people, not the lone two applicants.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Malsby", written in a cursive style.

Lynn Malsby

Robbin Grider

Lorena Stewart



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KLYMAXX

| | |
|------------------------------------|---|
| Word Mark | KLYMAXX |
| Goods and Services | IC 041. US 100 101 107. G & S: Entertainment, namely, live performances by a musical band. FIRST USE: 20030930. FIRST USE IN COMMERCE: 20030930 |
| Standard Characters Claimed | |
| Mark Drawing Code | (4) STANDARD CHARACTER MARK |
| Serial Number | 77571759 |
| Filing Date | September 17, 2008 |
| Current Filing Basis | 1A |
| Original Filing Basis | 1A |
| Published for Opposition | February 24, 2009 |
| Owner | (APPLICANT) Joyce Irby INDIVIDUAL UNITED STATES 8306 Wilshire blvd # 8072 Beverly Hills CALIFORNIA 90211 (APPLICANT) Bernadette Cooper INDIVIDUAL UNITED STATES 8306 Wilshire blvd # 8072 Beverly Hills CALIFORNIA 90211 |

**Attorney of
Record** Jamie Shelden
Type of Mark SERVICE MARK
Register PRINCIPAL
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Indicator** LIVE

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401911138

10/6/53

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THE KNITTING FACTORY, 1021 Hollywood Blvd., Hyw'd. Sister to the NYC club features two stages for headliners and the more intimate AfterKitt Lounge. Cover: \$20-\$5. Full bar. All ages. (323) 463-0204.

Fri.—The Sleepy Jackson, On the Speakers, Ross Gould, 8 p.m.; \$13. See Scoring the Clubs in the bar. They got those hats re-blocked, and now there's no stopping **The Alarm**, 7 p.m.; \$15. In the lounge: **William Mylar**, 7 p.m.; \$5. **The Bentleys**, 8 p.m.; **Rutherford B. Hayes Is Dead**, 9 p.m.; KXLU welcomes **Pleaseasaur, Slim Mackerel**, 10 p.m.; each \$7.

Sat.—Private event. In the bar: Sole, Alias, Odd Nosdam, Telephon Jim Jesus, 7:30 p.m.; \$10. In the lounge: **Pete Schmidt**, 7 p.m.; **Ernie Payne**, 8 p.m.; **Eleventy**, 9 p.m.; **Erin O'Brian**, 10 p.m.; **Shangdila**, 11 p.m.; **Everyday Joe**, mid.; each \$7. Sun.—Call for info. In the bar: **Jamaica Gold** with guest DJs, others, 9 p.m.; call for cover. In the lounge: **RBI's**, 8 p.m.; \$6. **The Frodads, Candybox Violence, Matt Dougherty**, 9 p.m.; \$7. Mon.—**Justin Lanning, Tanning Ingrid, Hurly Burly, The Truants, Chris Drizen, Julia Lehman, Aaron Brady, Jim & the Rented Valentines**, 7 p.m.; \$10. In the bar: **This End Up, Special Agent Utah, DNA, The Runway, The Rainman Suite, B Foundation**, 6:30 p.m.; \$10. In the lounge: **The Cushion Theory**, 9 p.m.; **The Horribles**, 10 p.m.; both \$6. **The Southerlys**, 11 p.m.; \$7. Tues.—Call for info. In the lounge: **Bluebeat Lounge**

with **Santiago Chris Murray, See Spof, Desungh**, others, 9 p.m.; \$5.

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LARGO, 432 N. Fairfax Ave. A sit-down club with a strict no-chattering policy. Cover \$12-\$2. Full bar. All ages. (323) 852-1073 or 852-1851.

Fri.—Jon Brion.

Sat. & Tues.—U.K. pop-rock stylist (of Soft Boys, R.H. & the Egyptians infamy) Robyn Hitchcock.

Mon.—The Paul F. Tompkins Show.
LAVA LOUNGE, 1533 N. La Brea Ave., Hyw'd. Ultra-exotic tiki shrine to the lounge life. Cover \$5-\$2. Sun. karaoke free. Over 21. Full bar. (323) 876-6612.

Fri.—DJs Marc Lewis, Von Shock serve up "tiki house lounge."

Sat.—Super '80s with guest DJs. Every Sun.—**Kinky Karaoke** with MC Todd; no cover. Tues.—**We're Not Erwin, Aquafantastica, Wives & Lovers.**

Wed.—Kill Baby Kill, Lowrise, The Exchange. Thurs.—DJ Queen of Clubs spins electroclash and '80s sounds.

LIGHTHOUSE CAFE, 30 Pier Ave., Hermosa Beach. Cover \$5 Fri.-Sun., free weeknights. Full bar. Over 21. (310) 372-6911.

Fri.—Paul & Dan, 4 p.m.; **Blue Room**, 9 p.m.



CONCERT CALENDAR

THIS SATURDAY • NOV. 22

89.9 KCRW PRESENTS A SOUNDS ELECTRIC EVENING
LIVE PERFORMANCES BY BECK, SPECIAL, L. SOUL, P. DOUTT, T. C. PERFORMANCE • DAMIAN RICE • JORGENSEN
THE POLYPHONIC SPREE • JEM • GARY JULES • LIZ PHAIR • HOSTED BY NICK HARTCOURT

FRIDAY • DEC 5

TRANS-SIBERIAN ORCHESTRA'S
CHRISTMAS EVE AND OTHER STORIES LIVE IN CONCERT

SATURDAY • DEC 20

VH1 CLASSIC PRESENTS

Universal Attractions

Agency Statement

Artist: Klymaxx

Date: May 21, 2004

| Date | City | Gross | Deposit | Commission |
|----------------|-------------|--------------|----------------|-------------------|
| August 7, 2004 | Atlanta, GA | \$ 8,500.00 | \$ 4,250.00 | \$ 850.00 |

Gross: \$ 8,500.00

Commission: \$ 850.00

Deposit \$ 4,250.00

Postage: \$ 10.00

Due Artist: \$ 3,390.00

Send: cashier's check made payable to
Lynn Malsby via priority mail to:
Lynn Malsby 3757 Valleybrink Rd.
Los Angeles 90039

145 W. 57th St., 15th Floor
New York, NY 10019

42

PYRAMID ENTERTAINMENT GROUP
89 FIFTH AVENUE, 7TH FLOOR
NEW YORK, N.Y. 10003 (212) 242-7274 FAX (212) 242-6932

ARTIST ENGAGEMENT CONTRACT

AGREEMENT made this 9 TH day of July, 2004

between Klymaxx (hereinafter

referred to as "ARTIST") AND Ronnie Perkins/Ronnie Perkins Production & Management, Inc.
(hereinafter referred to as "PURCHASER").

It is mutually agreed between the parties as follows:

The PURCHASER hereby engages the ARTIST and the ARTIST hereby agrees to perform the engagement hereinafter provided, upon all the terms and conditions herein set forth, including those hereof entitled "Addi-Terms and conditi

1. PLACE OF ENGAGEMENT Baton Rouge River Center (Riverside Centerplex)
Exact address 275 S. River Road Baton Rouge, LA 225-389-3030

2. DATE (s) OF ENGAGEMENT Sunday August 8, 2004

3. HOURS OF ENGAGEMENT 1 show at approximately 8 PM

4. REHEARSAL (s) IBD YES

5. FULL PRICE AGREED UPON \$3,500.00 [Three Thousand Five Hundred Dollars] Guarantee
Plus promoter to provide roundtrip airfares, hotel accommodations, sound, lights, backline
equipment, local ground transportation and all rider requirements.

All payments shall be paid by certified check, money order, bank draft or cash as follows:

Paid
RP \$750.00 along with signed contracts due back to PEG no later than July 14, 2004

(a) \$1,000.00 shall be paid by PURCHASER to and in the name of ARTIST'S agent,
not later than received on June 30, 2004 July 13, 2004

(b) \$1,750.00 shall be paid by PURCHASER to ARTIST not later than
upon arrival at event in **CASH ONLY**. Agent is hereby irrevocably authorized to turn
over all payments to ARTIST no later than August 10, 2004.

(c) Additional payments, if any, shall be paid by PURCHASER to ARTIST not later than _____

IF SCHEDULED PAYMENTS ARE NOT MADE ON TIME, ARTIST HAS THE RIGHT TO CANCEL THIS AGREEMENT
AND PURCHASER SHALL BE LIABLE TO ARTIST FOR DAMAGES, IN ADDITION TO THE COMPENSATION
PROVIDED HEREIN.

6. SCALE OF ADMISSION 35/45/55 Amount of People 5000 X Potential Gross \$

7. Purchaser to supply Artist with following equipment for shows:

Purchaser agrees to no advertising until 50% deposit, signed contract and rider are received
by P.E.G.

8. Artist shall not be bound by any term or conditions contained herein, until such time as all rider requirements are met to satisfaction
of Artist. This constitutes the sole complete and binding agreement between the parties hereto. Pyramid Entertainment Group acts
only as agent for ARTIST and assumes no liability hereunder.

Ronnie Perkins/Ronnie Perkins NAME
Production & Management, Inc. OF
(PURCHASER)

X [Signature]
(By authorized representative)

Address: 10130 Greenwell Springs Rd

Baton Rouge, LA 70814

Phone: 225-274-8896/225 Fax: 225-274-3832

Klymaxx

NAME
OF
(ARTIST)

X [Signature]
(By authorized representative)



Return all signed copies to responsible agent: Elyse Murray

Reference# 13909JN

THE ABOVE SIGNATURES CONFIRM THAT THE PARTIES HAVE READ AND APPROVE EACH AND ALL OF THE
"ADDITIONAL TERMS AND CONDITIONS" SET FORTH ON THE REVERSE SIDE HEREOF.

Ronnie Perkins Production & Management

10130 Greenwell Springs Road, Baton Rouge, LA 70814

Office (225) 273-2288 Fax (225) 273-3355

Venue/Date Location and Load In-Time

Show I Thursday August 5th

Sound Company

**Load In-Time – 9:00 am
Sound Check Time: 1:00 pm**

**Shreveport Municipal Auditorium
705 Elvis Presley Street
Shreveport, LA 71101
Venue # 318-673-5100**

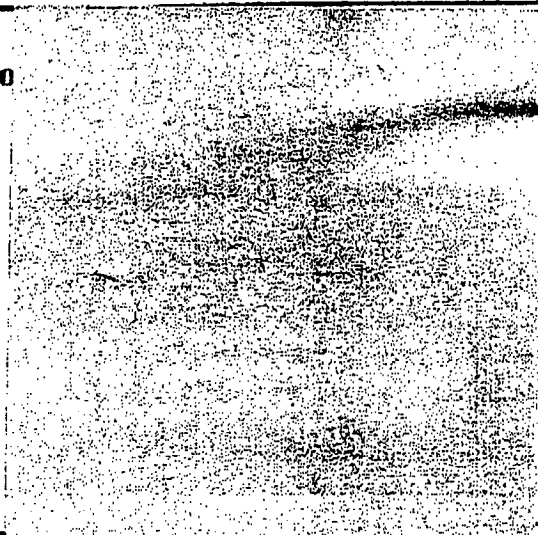
Show II Friday August 6th

Sound Company

**Load In-Time – 9:00 am
Sound Check Time – 1:00pm**

**Mississippi Coliseum
1201 Mississippi Street
Jackson Mississippi 38930
Venue # 601-961-4000**

Sho



Show IV Sunday August 8th

**Sound Company
Load In-Time – 9:00 am
Sound Check Time – 1:00pm**

**Riverside Centroplex
275 S. River Road
Baton Rouge, LA
Venue #225-389-3030**

Date

Date

**Ronnie Perkins
Ronnie Perkins Production/Management, Inc.**

Ronnie Perkins Production & Management

10130 Greenwell Springs Road, Baton Rouge, LA 70814

Office (225) 273-2288 Fax (225) 273-3355

Shreveport, LA

Clarion Hotel

1419 E. 70th Street

Shreveport, LA 71105

318-797-9900 or 1-800-252-7466

Jackson, Mississippi

Clarion Hotel

400 Greg Mont Street

Jackson, Mississippi 39202

601-969-2141 or 1-800-252-7466

Baton Rouge, LA

Sheraton Hote

103 France Street

Baton Rouge, LA 70802

225-242-4600

Date

Date

Ronnie Perkins
Ronnie Perkins Production/Management, Inc.



TravelCenters of America

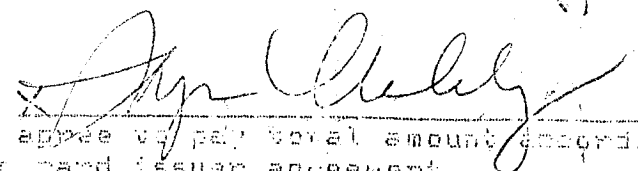
SLIDELL TRAVEL CENTER / 7-12 02 193 E / SLIDELL, LA 70669 / 804-643-9974
Number: 2641-1854 5/09/04 Station: 1

Response (DIAL) APPROV 3-1068 Merchant ID: 226531893/8921 Log Number: 26
11224

| Pump | Product | Size | Quantity | Unit Cost | Net Cost | Total |
|------|-----------|------|----------|-----------|----------|--------|
| 9.4 | DIESEL 92 | N | 105.167 | 1.759 | 1.759 | 184.89 |

non sales-tax total = 184.89
subtotal = 184.89

TOTAL = 184.89

Signature: 

I agree to pay total amount according
to card issuer agreement.

Salesperson ID: FRANK/SMARTFUEL Truck Number: 1
Invoice/Draft #: 111881
Card Number: xxxxxxxxxxxx4210

Billing Company: VISA/EFB 271025 / VISA
Company Name: STON ROUTE 45 (99999)

FUEL CONTAINS NO VISIBLE EVIDENCE OF TAX — REF ID: 34-1747777

RoadKing Club members get Double Points in August. Offer good through 8/31/04

DRIVER'S DUPLICATE COPY

Federal, State and Local
Taxes, when applicable,
are included in price
& amount.

Five Decades of Hits * BET's Lifetime Achievement Award Winning Group

The Isley Brothers "Good Thang Man Tour" **Coming Live to the Mississippi Coliseum**

Showtime 8:00 p.m.

Starring: The Legendary

Isley

Brothers

Featuring

Ronald "Mr. Bigg" Isley

*"Contagious, Shout, Choosy Lover,
Between the Sheets"*

Keith Sweat

"Make It Last Forever", "I Want Her"

The All Female Group

Klymaxx

"The Men All Pause", "I Miss You", "Meeting in the Ladies Room"

With Special Performances by Recording Artist

Rude

"Good Thang Man" "I Wanna Make Love"

Jerry L

"After Tha Party" "Do The Nasty"

The RP Blues Band

"She's Got Papers" "If You Ain't Got It Like That"

Get Your Tickets Now

**All Tickets on Sale Now at: Mississippi Coliseum Box Office, Be-Bop Record Shops,
and All **ticketmaster** Locations or Charge by phone at (601) 355-5252**

**For Ticket Information Call The Coliseum Box Office at (601) 353-0603 or
Ronnie Perkins Productions at (225) 273-7778**

A Ronnie Perkins Productions Presentation

LYNN M MALSBY
3757 VALLEYBRINK RD
LOS ANGELES CA 90039-1426

Outgoing Wire Transfer Notice

Dear Valued Customer:

We are writing today to let you know that the following transaction(s) have posted to your account. If you have questions, please call us at 1-800-788-7000. We're here 24 hours a day, seven days a week, and our goal is to provide you with the best customer service possible. Thanks for banking with Washington Mutual.

Transaction Date:

07/29/2004

Account:


Stockton

Washington Mutual Processing Site:

Wire Transfer Domestic Withdrawal :

2,250.00 -

Wire Transfer Fee:

30.00 -

FEDplus/PAYplus Reference:

040729094545H800

Fed Reference:

20040729L1LFAS3C001577

Beneficiary:

JOYCE IRBY

Other Beneficiary Information:

Sender Name:

WASHINGTON MUTUAL BANK FA (ASB)

Sender ABA:

321180748

Sender Reference:

2855915094075

By Order of/Originating Party:

LYNN M MALSBY

STAPLE
HERE



MALSBY/LYNN

DL2024753671

LA14TN

| FLIGHT | DATE | CLASS | ORIGIN |
|---------------------|-------|-------------|---------|
| DL179 | 09AUG | L | ATLANTA |
| OPERATED BY | COACH | DESTINATION | |
| DELTA AIR LINES INC | | LOS ANGELES | |

DEPARTURE GATE A06 **SUBJECT TO CHANGE**

BOARDING PASS
ELECTRONIC TICKET
2 006 1166354304 5
3LXQP1

DEPARTS
555P

SEAT
37D
ZONE 6



BAGS
01
ATL052330/SC

BOARDING PASS
***** ET *****
MALSBY/LYNN

DL2024753671

| FLIGHT | DATE |
|---------------------------------|-------------|
| DL179 | 09AUG |
| ORIGIN | DESTINATION |
| ATLANTA | LOS ANGELES |
| OPERATED BY DELTA AIR LINES INC | |

SEAT
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ZONE 6

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BAGS
01

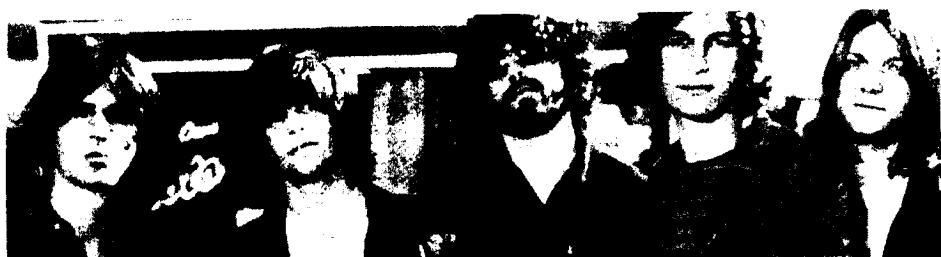
VH1 invites you to a one-time only
FREE reunion performance of one
of your favorite bands...

SUNDAY, NOVEMBER 23RD



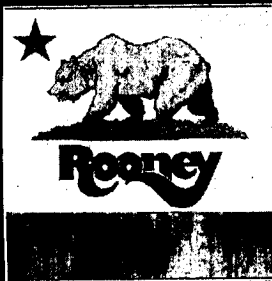
THE ROXY

9009 SUNSET BLVD
West Hollywood, CA
SHOWTIME 9PM DOORS 8PM



Rooney

HENRY FONDA THEATRE
AVALON (FORMALLY THE PALACE)
Thursday, November 21st
Sunday, November 24th



ALBUM AVAILABLE
NOW AT

**BEST
BUY**

www.rooney-band.com

CALENDAR CLUBS Rock & Pop

THE KNITTING FACTORY, 7021 Hollywood Blvd., Hlywd. Sister to the NYC club features two stages for headliners and the more intimate AlterKnit Lounge. Cover \$20-\$5. Full bar. All ages. (323) 463-0204.
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Tues.—Call for info. In the lounge: Bluebeat Lounge

with ska friends **Chris Murray, See-Spot, Destroying**, others, 9 p.m.; \$5.
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Fri.—**Paul & Dan**, 4 p.m.; **Blue Room**, 9 p.m.



CONCERT CALENDAR

THIS SATURDAY! • NOV 22

89.9 KCRW PRESENTS A SOUNDS ECLECTIC EVENING
LIVE PERFORMANCES BY BECK SPECIAL SOLO ACOUSTIC PERFORMANCE • DAMIEN RICE • JURASSIC 5
THE POLYPHONIC SPREE • JEM • GARY JULES • LIZ PHAIR • HOSTED BY NIC HARTCOURT

FRIDAY • DEC 5

TRANS-SIBERIAN ORCHESTRA'S
CHRISTMAS EVE AND OTHER STORIES LIVE IN CONCERT

SATURDAY • DEC 20

VH1 CLASSIC PRESENTS

THE BRIAN SETZER ORCHESTRA
2ND ANNUAL CHRISTMAS EXTRAVAGANZA!

ticketmaster
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**UNIVERSAL
AMPHITHEATRE**

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IT IS LIVE

AD PRODUCTIONS PRESENTS

12-12

stretcharmstrong

WHISKY

PIJABEACH • THE BLEED • THE AKA'S • IN MEMORY

12-15



INTEGRITY

WHISKY

THE AGONY SCENE • ON BROKEN WINGS • REFLUX

1-7

AS I LAY DYING

WHISKY

THE JUDAS CRADLE • CANNAE • ON BROKEN WINGS

1-29

Whisky — **MADBALL**

12-23

Whisky — **THE BLOOD BROTHERS**

1-8

Whisky — **CURL UP AND DIE • BURY YOUR DEAD**

ALL AGES

For info call 210.360.1110

tickets available thru: **ticketmaster**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cheryl Cooley,

Opposer,

v.

Bernadette Cooper and
Joyce Irby,

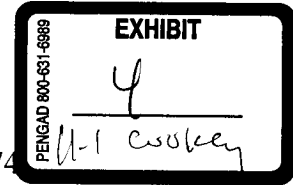
Applicants.

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Opposition no.: 91189474

Mark: KLYMAXX

Serial no.: 77/571,759



ANSWER TO NOTICE OF OPPOSITION

Applicants, Bernadette Cooper and Joyce Irby, respond to the Notice of Opposition ("Notice") filed by Cheryl Cooley as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice, which are therefore denied.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice, which are therefore denied.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice, which are therefore denied.

4. Applicant admits the allegations of Paragraph 4 of the Notice.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice, which are therefore denied.

6. Applicant denies that the Opposer will be damaged by the registration of Applicant's Mark. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 of the Notice, which are therefore denied.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the main portion of Paragraph 7 of the Notice, which are therefore denied.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the main portion of Paragraph 8 of the Notice, which are therefore denied.

9. Applicant denies the allegations of Paragraph 9 of the Notice.

10. Applicant denies the allegations of Paragraph 10 of the Notice.

11. Applicant denies that Opposer is entitled to the relief set forth in the prayer for relief, or to any relief whatsoever.

12. Applicant denies the allegations of Paragraph 10 of the Notice.

13. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Notice, which are therefore denied.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of the Notice, which are therefore denied.

15. Applicant denies the allegations of Paragraph 10 of the Notice.

16. Applicant denies each and every allegation not previously admitted or otherwise qualified.

AFFIRMATIVE DEFENSES

1. Opposer's has failed to state a claim upon which relief can be granted.
2. Opposer's opposition is barred under the doctrine of acquiescence.
3. Applicant hereby gives notice that it intends to rely on any additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such additional affirmative defenses.

WHEREFORE, Applicant requests that Opposer's Notice of Opposition be dismissed in its entirety and that Applicant's application proceed to registration.

Respectfully submitted,

Date: May 8, 2009

By: Jamie Shelden

Jamie R. Shelden, Esq.
Law Office of Jamie Shelden
201-A McCray Street, Suite 305
Hollister, CA 95023
(858) 777-5545 (office and fax)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

is being served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, addressed as follows:

Jack F. Sherer
99 Park Avenue, 3rd Floor
New York, NY 10016

Jamie R. Shelden
Jamie R. Shelden

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CHERYL COOLEY,

Opposer,

Opposition No.: 91189474

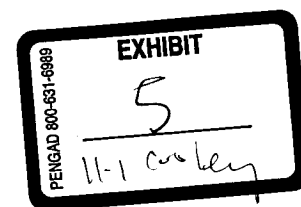
BERNADETTE COOPER and JOYCE IRBY

Applicants.
-----X

ANSWERS TO APPLICANTS' REQUEST FOR ADMISSIONS

Opposer, Cheryl Cooley, hereby answers Applicants' Request for Admissions, in writing and under oath, as set forth below.

1. **Answer to Request 1:** On or about January 1, 1981, the original members of KLYMAXX ("Original Members") consisting of Cheryl Cooley, Bernadette Cooper, Denise Walk, Lorena Porter, Cheryl Ann McLennan, Lynn Malsby, and Myrtle Williams entered into an agreement with Solar Records, Inc. in which the Original Members warranted, represented and agreed that the Original Members had the sole and exclusive ownership of all right in and to the name KLYMAXX.
2. **Answer to Request 2:** On or about August 16, 2007, prior to the filing of Opposer's Notice of Opposition, Opposer objected, in writing, to the use by Applicants of KLYMAXX.



3. **Answer to Request 3:** To the best of Opposer's knowledge, no corporation, limited liability company or any other legal entity was formed pursuant to the laws of any jurisdiction. in which Opposer and Applicants had or have any joint ownership interest.

4. **Answer to Request 4:** To the best of Opposer's knowledge, in December, 1979, Opposer was invited to join KLYMAXX by Bonnie Thompson. Notwithstanding Bernadette Cooper's claim to be the founder of KLYMAXX on or about January 1, 1981, Bernadette Cooper warranted, represented, and agreed that the Original Members had the sole and exclusive ownership of all right in and to the name KLYMAXX.

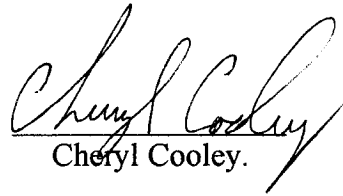
5. **Answer to Request 5:** Opposer receives performance, publishing royalties and the like from ASCAP, SoundExchange and Sony/ATV Music Publishing d/b/a Portrait Solar

6. **Answer to Request 6:** In 1990, KLYMAXX consisted of three members, Opposer, Lorena Porter, and Robbin Grider. Unlike Applicants, who abandoned Klymaxx to pursue solo careers, Opposer continued with KLYMAXX until 1993/1994. Starting in July, 2002, to date, Opposer has continuously used the name KLYMAXX, first in reconstituting KLYMAXX, and then in performing.

7. **Answer to Request 7:** To the best of Opposer's knowledge, Opposer was invited to join KLYMAXX by Bonnie Thompson. To the best of Opposer's knowledge, Opposer does not recall whether or not Bernadette Cooper originally made up the name, as spelled.

8. **Answer to Request 8:** Opposer admits that any and all documents submitted by Opposer are or will be authentic.

Dated: January 15, 2010


Cheryl Cooley.

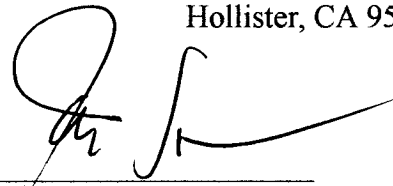
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

ANSWERS TO APPLICANTS' REQUEST FOR ADMISSIONS

is being served upon Applicants on ~~January~~^{February}, 2010, by depositing a copy of same in the United States mail, first class postage prepaid, addressed as follows:

: Jamie R. Sheldon, Esq.
 Attorney for Applicants
 1760 Suite F, PMB 220
 Airline Highway
 Hollister, CA 95023



Jack F. Scherer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
CHERYL COOLEY,

Opposer,

Opposition No.: 91189474

BERNADETTE COOPER and JOYCE IRBY

Applicants.
-----X



ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES

Opposer, Cheryl Cooley, hereby answers Applicants' First Set of Interrogatories,
as follows:

1. **Answer to Interrogatory 1:** The approximate dates in which Opposer first and last performed with Applicants are as follows:

| | First Performed | Last Performed |
|-------------------|-----------------|---------------------|
| Bernadette Cooper | Jan./March 1980 | Nov. 1986/ Jan 1987 |
| Joyce Irby | Feb./Oct. 1981 | Prior to Jan. 1988. |

2. **Answer to Interrogatory 2:** On or about January 1, 1981, the original members of KLYMAXX ("Original Members") consisting of Cheryl Cooley, Bernadette Cooper, Denise Walk, Lorena Porter, Cheryl Ann McLennan, Lynn Malsby, and Myrtle Williams entered into an agreement with Solar Records, Inc. ("Solar Agreement") in which the Original Members warranted, represented and agreed that the Original Members had the

sole and exclusive ownership of all right in and to the name KLYMAXX. Other than the Solar Agreement, to the best of Opposer's knowledge, there does not exist any written agreement between Opposer, on the one hand and Applicants, on the other; to the best of Opposer's knowledge, Applicants and Opposer did not form any entity to be utilized for their mutual benefit.

3. **Answer to Interrogatory 3:** See Answer to Interrogatory 2 which is incorporated herein and made a part hereof.

4. **Answer to Interrogatory 4:** To the best of Opposer's knowledge, in December, 1979, Opposer, during the formative rehearsals of KLYMAXX, was invited to join KLYMAXX by Bonnie Thompson.

5. **Answer to Interrogatory 5:** Opposer receives performance, publishing royalties and the like from ASCAP, SoundExchange and Sony/ATV Music Publishing d/b/a Portrait Solar.

6. **Answer to Interrogatory 6:** By 1990, KLYMAXX consisted of three members, Opposer, Lorena Porter, and Robbin Grider, as Applicants, had abandoned Klymaxx to pursue solo careers. Opposer continued with KLYMAXX until 1993/1994. Starting in July, 2002, to date, Opposer has continuously used the name KLYMAXX, first in reconstituting KLYMAXX, and then in performing.

7. **Answer to Interrogatory 7:** The dates and places of the musicians who performed and/or recorded with Opposer are as follows:

Dec. 29, 2002

Recording – Pacifica Studios

Culver City, CA

Sheila Young

Beatrice Thompkins

Patrick Butler
Sheree Dunn
Carla (Star) Fowler
Tricia Ann Lashmett
Alicia Morgan

| | | |
|---------------|-----------------------------------|--------------------|
| May 17, 2003 | Long Beach Pride Festival | Long Beach, CA |
| May 23, 2003 | Club Lingerie | Hollywood, CA |
| May 31, 2003 | Inland Empire Pride Festival | San Bernardino, CA |
| Jun. 14, 2003 | Pride In The Pines | Flagstaff, AZ |
| Jun. 23, 2003 | San Francisco Pride Festival | San Francisco, CA |
| Jul. 4, 2003 | Jewel's Catch One Disco | Los Angeles, CA |
| Jul. 11, 2003 | B.B. King's Blues Club | Universal City, CA |
| Jul. 27, 2003 | San Diego Pride Festival | San Diego, CA |
| Aug. 2, 2003 | Taste In San Pedro | San Pedro, CA |
| Aug. 23, 2003 | Picfair Village Street Fair | Los Angeles, CA |
| Aug. 31, 2003 | Suncoast Resort | St. Petersburg, FL |
| Sep. 26, 2003 | Hollywood Park Casino | Inglewood, CA |
| Oct. 3, 2003 | Tustin Tiller Days | Tustin, CA |
| Oct. 11, 2003 | Quiet Cannon Country Club | Montebello, CA |
| Oct. 19, 2003 | Carthay Square Block Party | Los Angeles, CA |
| Nov. 1, 2003 | Planet Gemini | Monterey, CA |
| Dec. 27, 2003 | Northwestern Renaissance Festival | Pasadena, CA |

Sheree Dunn
Tricia Ann Lashmett
Alicia Morgan
Tracey Patrick
Karen Walker

| | | |
|---------------|-------------------------|----------------|
| Jan. 7, 2004 | Western Fair Convention | San Diego, CA |
| Jan. 17, 2004 | Martin Luther King Park | Long Beach, CA |

Sheree Dunn
Tricia Ann Lashmett
Alicia Morgan
Tracey Patrick
Karen Walker

| | | |
|---------------|------------------------|------------------|
| Mar. 5, 2004 | Club Euphoria | Upland, CA |
| Mar. 28, 2004 | Club Skirts Pool Party | Palm Springs, CA |

Maureen Baker
Madelynn Jones
April King
Melita Morrison

Alisha Pullen

April 3, 2004

Recording - Pacifica Studios

Culver City, CA

April 5, 2004

Recording - Pacifica Studios

Culver City, CA

Melita Morrison

Alisha Pullen

May 5, 2004

Fox Theatre

Bakersfield, CA

May 21, 2004

Hogue Barmichael's

Newport Beach, CA

Maureen Baker

Madelynn Jones

April King

Melita Morrison

Alisha Pullen

Jun. 3, 2004

KBIG 104; Boom Boom Room

Laguna Beach, CA

Jul. 17, 2004

DiPiazza Restaurant & Lounge

Long Beach, CA

Maureen Baker

Madelynn Jones

April King

Vi Le

Alisha Pullen

Aug. 11, 2004

Spaghetini Italian Grill & Jazz Club

Seal Beach, CA

Aug. 21, 2004

Picfair Village Street Fair

Los Angeles, CA

Maureen Baker

Andrea Drawn

Madelynn Jones

Nati Niv

Alisha Pullen

Sept. 3, 2004

Cabrini's Koffee Bar

Los Angeles, CA

Sept. 25, 2004

Redondo Beach Lobster Festival

Redondo Beach, CA

Maureen Baker

Andrea Drawn

Madelynn Jones

April King

Alisha Pullen

Oct. 31, 2004

92Jamz; W. Hollywood Halloween Fest

West Hollywood, CA

Maureen Baker
Madelynn Jones
Danielle Mims
Nati Niv
Alisha Pullen

Nov. 5, 2004

Tennessee State University

Nashville, TN

Maureen Baker
Madelynn Jones
April King
Danielle Mims
Alisha Pullen

Nov. 26, 2004

Quiet Cannon Country Club

Montebello, CA

Maureen Baker
Madelynn Jones
Nati Niv
Alisha Pullen
Patrice

Nov. 28, 2004

Tour Buyers Fair

Las Vegas, NV

Maureen Baker
Madelynn Jones
Danielle Mims
Nati Niv
Alisha Pullen

2005

Feb. 25, 2005

B.B., King's Blues Club

Universal City, CA

Maureen Baker
Madelynn Jones
Danielle Mims
Nati Niv
Alisha Pullen

April 16, 2005

Peninsula Beverly Hills Hotel

Beverly Hills, CA

Maureen Baker
Madelynn Jones
Danielle Mims
Alisha Pullen

| | | |
|---------------|-------------------------------|--------------------|
| Aug. 12, 2005 | Fort McDowell Resort & Casino | Fountain Hills. AZ |
|---------------|-------------------------------|--------------------|

Vicki Abe
Amy Crittenden
Madelynn Jones
Danielle Mims
Alisha Pullen

| | | |
|----------------|------------------------------|-----------------|
| Sept. 25, 2005 | Recording – Pacifica Studios | Culver City, CA |
|----------------|------------------------------|-----------------|

Leah Auditor
Danielle Mims

| | | |
|---------------|----------------------|-----------------|
| Oct. 29, 2005 | Festival de la Gente | Los Angeles, CA |
|---------------|----------------------|-----------------|

Leah Auditor
Maureen Baker
Robin Bramlett
Amy Crittenden
Danielle Mims

| | | |
|---------------|---------------------------|-----------------|
| Dec. 31, 2005 | KROQ 94.1; Sunset Station | San Antonio, TX |
|---------------|---------------------------|-----------------|

Leah Auditor
Maureen Baker
Robin Bramlett
April King
Danielle Mims

2006

| | | |
|--------------|------------------------------|-----------------|
| May 22, 2006 | Recording – Pacifica Studios | Culver City, CA |
|--------------|------------------------------|-----------------|

Amy Crittenden
Victor Orlando
Bill Pittman
Michael Wilson
Sheila Young

| | | |
|--------------|------------------------------|------------------|
| July 2, 2006 | Recording – Pacifica Studios | Culver, City, CA |
|--------------|------------------------------|------------------|

Leah Auditor
Lisa Brown
Danielle Mims

| | | |
|---------------|------------------------------|-----------------|
| July 23, 2006 | Recording – Pacifica Studios | Culver City, CA |
|---------------|------------------------------|-----------------|

Leah Auditor
Brenda K.
Danielle Mims

| | | |
|---------------|---------------------------|-----------------|
| Jul. 30, 2006 | Ascension Lutheran Church | Los Angeles, CA |
|---------------|---------------------------|-----------------|

Vicki Abe
Leah Auditor
Amy Crittenden
Danielle Mims
Vivianna Rama

| | | |
|---------------|------------------------------|-----------------|
| Aug. 13, 2006 | Recording – Pacifica Studios | Culver City, CA |
|---------------|------------------------------|-----------------|

Danielle Mims
Ronnie Roseboro

| | | |
|---------------|------------------------------|-----------------|
| Aug. 13, 2006 | Recording – Pacifica Studios | Culver City, CA |
|---------------|------------------------------|-----------------|

Leah Auditor
Marshall Blue
Georgette Brewer
Danielle Mims
Networq

| | | |
|---------------|-----------------------------|-------------|
| Sept. 3, 2006 | Comcast Art & Soul Festival | Oakland, CA |
|---------------|-----------------------------|-------------|

Vicki Abe
Leah Auditor
Lisa Brown
Amy Crittenden
Danielle Mims
Vivianna Rama

2007

| | | |
|---------------|------------------------------|-----------------|
| Jan. 28, 2007 | Recording – Pacifica Studios | Culver City, CA |
|---------------|------------------------------|-----------------|

Leah Auditor
Lisa Brown
Danielle Mims

| | | |
|---------------|-------------------------------|-------------------|
| Mar. 27, 2007 | Aqua Lounge | Beverly Hills, CA |
| Mar. 31, 2007 | Dinah Shore Weekend/The Oasis | Palm Springs, CA |

| | | |
|----------------|------------------------------------|-----------------|
| Apr. 28, 2007 | Town House | Los Angeles, CA |
| May 23, 2007 | Stevie's Creole Cafe | Encino, CA |
| May 26, 2007 | Sportsman Enterprises Park | Huntsville, AL |
| May 26, 2007 | Level 88 Jazz Bistro | Nashville, TN |
| May 27, 2007 | B.B. King's Blues Club | Nashville, TN |
| Jun. 16, 2007 | Radio One Stone Soul Picnic | Dallas, TX |
| Aug. 24 , 2007 | The Nile Bar & Grill | Bakersfield, CA |
| Aug. 25, 2007 | Los Angeles Women's Music Festival | Van Nuys, CA |

Vicki Abe
Leah Auditor
Robin Bramlett
Lisa Brown
Amy Crittenden
Danielle Mims

| | | |
|--------------|-----------------------------------|----------------------|
| Oct. 6, 2007 | East Stroudsburg Univ. Homecoming | East Stroudsburg, PA |
|--------------|-----------------------------------|----------------------|

Vicki Abe
Robin Bramlett
Lisa Brown
Amy Crittenden
Mar'Ja
Danielle Mims

| | | |
|---------------|----------------------------------|-----------------|
| Dec. 21, 2007 | Downtown On Ice; Pershing Square | Los Angeles, CA |
|---------------|----------------------------------|-----------------|

Vicki Abe
Leah Auditor
Robin Bramlett
Lisa Brown
Amy Crittenden
Danielle Mims

2008

| | | |
|--------------|-------------|-------------------|
| Feb. 5, 2008 | Aqua Lounge | Beverly Hills, CA |
|--------------|-------------|-------------------|

Vicki Abe
Lisa Brown
Latoya Buchanan
Robin Bramlett
Amy Crittenden
Danielle Mims

| | | |
|---------------|-------------------|-------------------|
| Mar. 21, 2008 | Cabrillo Pavilion | Santa Barbara, CA |
|---------------|-------------------|-------------------|

Vicki Abe
Lisa Brown
Latoya Buchanan
Robin Bramlett
Amy Crittenden
Danielle Mims

Jun. 13, 2008
Jul. 12, 2008
Aug. 16, 2008
Oct. 18, 2008

Honda Center
Rabobank Arena
Arco Arena
Orleans Arena

Anaheim, CA
Bakersfield, CA
Sacramento, CA
Las Vegas, NV

Vicki Abe
Lisa Brown
Latoya Buchanan
Amy Crittenden
Danielle Mims
Jennifer Oberle

Oct. 24, 2008

Arizona State Fair

Phoenix, AZ

Vicki Abe
Lisa Brown
Latoya Buchanan
Amy Crittenden
Danielle Mims
Robin Ronutree

2009

July 3, 2009

Universal CityWalk

Universal City, CA

Vicki Abe
Leah Auditor
Latoya Buchanan
Amy Crittenden
Bikki (Marjorie) Johnson
Danielle Mims

Aug. 7, 2009
Sept. 19, 2009

Desert Diamond Casino
Dan Foley Cultural Center

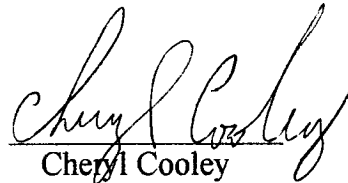
Tucson, AZ
Vallejo, CA

8. **Answer to Interrogatory 8:** The dates and venues of the live performances are as follows:

| | | |
|----------------|--------------------------------------|----------------------|
| Sept. 19, 2009 | Dan Foley Cultural Center | Vallejo, CA |
| Aug. 7, 2009 | Desert Diamond Casino | Tucson, AZ |
| July 3, 2009 | Universal CityWalk | Universal City, CA |
| Oct. 24, 2008 | Arizona State Fair | Phoenix, AZ |
| Oct. 18, 2008 | Orleans Arena | Las Vegas, NV |
| Aug. 16, 2008 | Arco Arena | Sacramento, CA |
| Jul. 12, 2008 | Rabobank Arena | Bakersfield, CA |
| Jun. 13, 2008 | Honda Center | Anaheim, CA |
| Mar. 21, 2008 | Cabrillo Pavilion | Santa Barbara, CA |
| Feb. 5, 2008 | Aqua Lounge | Beverly Hills, CA |
| Dec. 21, 2007 | Downtown On Ice; Pershing Square | Los Angeles, CA |
| Oct. 6, 2007 | East Stroudsburg Univ. Homecoming | East Stroudsburg, PA |
| Aug. 25, 2007 | Los Angeles Women's Music Festival | Van Nuys, CA |
| Aug. 24, 2007 | The Nile Bar & Grill | Bakersfield, CA |
| Jun. 16, 2007 | Radio One Stone Soul Picnic | Dallas, TX |
| May 26, 2007 | Sportsman Enterprises Park | Huntsville, AL |
| May 26, 2007 | Level 88 Jazz Bistro | Nashville, TN |
| May 27, 2007 | B.B. King's Blues Club | Nashville, TN |
| May 23, 2007 | Stevie's Creole Cafe | Encino, CA |
| Apr. 28, 2007 | Town House | Los Angeles, CA |
| Mar. 31, 2007 | Dinah Shore Weekend | Palm Springs, CA |
| Mar. 27, 2007 | Aqua Lounge | Beverly Hills, CA |
| Sept. 3, 2006 | Comcast Art & Soul Festival | Oakland, CA |
| Jul. 30, 2006 | Ascension Lutheran Church | Los Angeles, CA |
| Dec. 31, 2005 | KROQ 94.1; Sunset Station | San Antonio, TX |
| Oct. 29, 2005 | Festival de la Gente | Los Angeles, CA |
| Aug. 12, 2005 | Fort McDowell Resort & Casino | Fountain Hills, AZ |
| Feb. 25, 2005 | B.B., King's Blues Club | Universal City, CA |
| Nov. 28, 2004 | Tour Buyers Fair | Las Vegas, NV |
| Nov. 26, 2004 | Quiet Cannon Country Club | Montebello, CA |
| Nov. 5, 2004 | Tennessee State University | Nashville, TN |
| Oct. 31, 2004 | 92Jamz; W. Hollywood Halloween Fest | West Hollywood, CA |
| Sept. 25, 2004 | Redondo Beach Lobster Festival | Redondo Beach, CA |
| Aug. 21, 2004 | Picfair Village Street Fair | Los Angeles, CA |
| Aug. 11, 2004 | Spaghetini Italian Grill & Jazz Club | Seal Beach, CA |
| Jul. 17, 2004 | DiPiazza Restaurant & Lounge | Long Beach, CA |
| Jun. 3, 2004 | KBIG 104; Boom Boom Room | Laguna Beach, CA |
| May 21, 2004 | Hogue Barmichael's | Newport Beach, CA |
| May 5, 2004 | Fox Theatre | Bakersfield, CA |
| Mar. 28, 2004 | Club Skirts Pool Party | Palm Springs, CA |
| Mar. 5, 2004 | Club Euphoria | Upland, CA |
| Jan. 17, 2004 | Martin Luther King Park | Long Beach, CA |
| Jan. 7, 2004 | Western Fair Convention | San Diego, CA |
| Dec. 27, 2003 | Northwestern Renaissance Festival | Pasadena, CA |
| Nov. 1, 2003 | Planet Gemini | Monterey, CA |
| Oct. 11, 2003 | Quiet Cannon Country Club | Montebello, CA |

| | | |
|---------------|------------------------------|--------------------|
| Oct. 3, 2003 | Tustin Tiller Days | Tustin, CA |
| Sep. 26, 2003 | Hollywood Park Casino | Inglewood, CA |
| Aug. 31, 2003 | Suncoast Resort | St. Petersburg, FL |
| Aug. 23, 2003 | Picfair Village Street Fair | Los Angeles, CA |
| Aug. 2, 2003 | Taste In San Pedro | San Pedro, CA |
| Jul. 27, 2003 | San Diego Pride Festival | San Diego, CA |
| Jul. 11, 2003 | B.B. King's Blues Club | Universal City, CA |
| Jul. 4, 2003 | Jewel's Catch One Disco | Los Angeles, CA |
| Jun. 23, 2003 | San Francisco Pride Festival | San Francisco, CA |
| Jun. 21, 2003 | Christopher Street West | West Hollywood, CA |
| Jun. 14, 2003 | Pride In The Pines | Flagstaff, AZ |
| May 31, 2003 | Inland Empire Pride Festival | San Bernardino, CA |
| May 23, 2003 | Club Lingerie | Hollywood, CA |
| May 17, 2003 | Long Beach Pride Festival | Long Beach, CA |

Dated: January 15, 2010


Cheryl Cooley

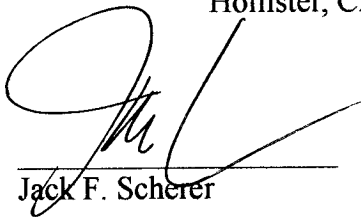
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES

is being served upon Applicants on ^{February 4}~~January~~, 2010, by depositing a copy of same in the United States mail, first class postage prepaid, addressed as follows:

Jamie R. Sheldon
Attorney for Applicants
1760 Suite F, PMB 220
Airline Highway
Hollister, CA 95023



Jack F. Scherer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-----------------------|---|--------------------------|
| Cheryl Cooley, |) | |
| |) | |
| Opposer, |) | Opposition no.: 91189474 |
| |) | |
| v. |) | Mark: KLYMAXX |
| |) | |
| |) | Serial no.: 77/571,759 |
| |) | |
| Bernadette Cooper and |) | |
| Joyce Irby, |) | |
| |) | |
| Applicants. |) | |

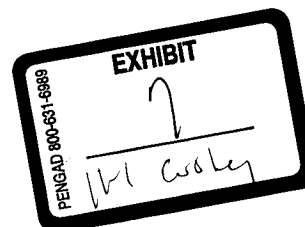
ANSWER TO FIRST INTERROGATORIES

Applicants, Bernadette Cooper and Joyce Irby, respond to the Notice of Opposition ("Notice") filed by Cheryl Cooley as follows:

1. With reference to Applicants' alleged first use in commerce on September 30, 2009 ("First Use") of the alleged trademark Klymaxx ("Klymaxx"), set forth whether Applicant's First Use was in connection with live performance of a musical band.

Applicant doesn't not claim a first use date of September 30, 2009.

2. If Klymaxx's first use was in connection with a live performance by a musical band, please set forth the names of the people who first performed with Applicants using Klymaxx.



Bernadette Cooper, Joyce Irby, Lynn Malsby, Lorena Stewart, Robbin Grider, Terri Lyne Carrington, Cookie Dean, Portia Rolle, Regina Troupe, Maureen Baker, Penny Ford all at various times.

3. From the date of First Use to the date hereof, have the people who performed live with Applicants remained the same.

No

4. From the date of First Use to the date hereof, how many times have Applicants performed live using Klymaxx.

18 times

5. With reference to 4 above, please set forth the date of each live performance.

November 23, 2003

July 30, 2004

August 1, 2004

August 7, 2004

September 4, 2005

May 29, 2006

September 23, 2006

October 20, 2006

July 28, 2007

August 4, 2007

August 11, 2007

August 18, 2007

August 25, 2007.

August 31, 2007

October 31, 2007

June 14, 2008

August 9, 2008

September 13, 2009

6. With reference to 4 above, please set forth the name of each venue (place of live performance) and the address of each live performance.

Roxy Theater, Hollywood California

Rapides Coliseum, 5600 Coliseum Blvd Alexandria, Louisiana

Plaquevine Civic Center, Baton Rouge, Louisiana

Flashback Festival, Hi Fi Amphitheater, Atlanta, Georgia

Rainbow Festival, LGBT, Sacramento California

African American Fest, Town Point Park, Norfolk, Virginia

The Cal Expo, Liberty Rose Productions, Sacramento California

Newark Symphony Hall, Newark, New Jersey

Ebony family reunion tour:

Belle Isle Park, Detroit, Michigan

Washington park, Chicago Illinois

Audubon park, Memphis Tennessee

Eastover park, Charlotte North Carolina

Cascade park, Atlanta Georgia.

Tom Joyner pre party (The Gaylord Palms Resort) Orlando, Florida

Halloween Festival, West Hollywood, California

Hawaii Hahaione Marketplace Honolulu Hawaii

Flashback Festival Hill Amphitheater Georgia

Greek Theater Los Angeles California

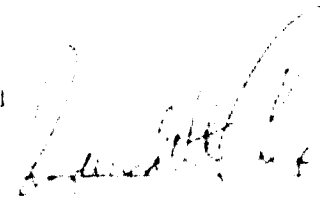
With reference to 4 above, please set forth a legible copy of an advertisement for each performance.

Applicant does not have copies of ads advertising for these performances

Signed

Date July 2, 2009

By



Bernadette Cooper

Signed

Date July 2, 2009

By



Joyce Levy

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

is being served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, addressed as follows:

Jack E. Sheler
89 Park Avenue, 3rd Floor
New York, NY 10016

Janice Shelden

Janice R. Shelden

Hawaii Aloha Tower Marketplace, Honolulu, Hawaii

Flashback Festival Hi Fi Amphitheater, Georgia

Greek Theater, Los Angeles, California

7. With reference to 4 above, please set forth a legible copy of an advertisement for each performance.

Applicant does not have copies of any advertising for these performances.

Signed,

Date: July, 2009

By: _____

Bernadette Cooper

Signed,

Date: July, 2009

By: _____

Joyce Irby

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

is being served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, addressed as follows:

Jack F. Shorer
99 Park Avenue, 3rd Floor
New York, NY 10016

Janice Shelden
Janice K. Shelden

HIGGINS & DUBNER
ATTORNEYS AT LAW
ATLANTA FINANCIAL CENTER
3333 PEACHTREE ROAD, N.E.
SUITE 230
ATLANTA, GEORGIA 30326

STEVEN DUBNER
HIGDUB@AOL.COM

TELEPHONE: (404) 264-1011
TELECOPIER: (404) 264-1044

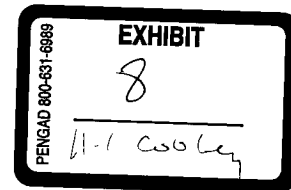
May 14, 2003

VIA FEDERAL EXPRESS
AND FIRST CLASS MAIL

Ms. Cheryl Cooley
5807 Pickford Street
Los Angeles, California 90019-4936

Re: "Klymaxx"

Dear Ms. Cooley:



I and my law firm are legal counsel to Joyce Irby in connection with your use of the name "Klymaxx." It has come to our client's attention that recently you have taken several actions with respect to that name that are in derogation of our client's rights to such name. The purpose of this letter is to inform you of our client's position and demand that you immediately cease all unauthorized use of the name "Klymaxx."

On or about February 19, 2003, you filed with the United States Patent and Trademark Office an application to register the mark "Klymaxx" on the Principal Register. In that application, which has been assigned Serial No. 76498106, you claim to be the sole owner of the mark and claim a first use date of January 1, 1981.

Based upon information provided to us by our client, it appears clear that such application is false and misleading. Specifically, although you claim sole ownership of the mark, the name "Klymaxx" is owned collectively by the original, individual members of that musical group, including our client. You should be aware that the application you signed included a verification of the truth of the statements contained in the application, pursuant to 15 USC Section 1051. False statements contained in the application may be punishable by fine or imprisonment or both under 18 USC Section 1001.

Ms. Cheryl Cooley

May 14, 2003

Page 2

It is our client's position that the application is false, that you are not the sole owner of the mark and that you are not entitled to registration of the mark with the United States Patent and Trademark Office or with any other governmental entity. This letter constitutes notice of our client's intention to file an Opposition to registration of the mark with the USPTO.

In addition, our client informs us that you have formed a new musical group but are using the name "Klymaxx" as the name for such group. Your use of the name "Klymaxx" in this regard both deceives and defrauds the general public and infringes upon our client's rights to that name. Such deceptive advertising violates numerous federal and state statutes and is actionable both criminally and civilly. The mere fact that at one time you were a member of the group "Klymaxx" does not mean that every subsequent all female group of which you are a member can call itself "Klymaxx." Your attempt to appropriate the name "Klymaxx" for your personal enrichment is a disservice to the other members of Klymaxx, the fans and admirers of "Klymaxx" and the public at large.

In furtherance of your efforts it appears that you have registered the domain name "www.klymaxx.com" as a website for your new musical group. Of course, our client objects to your registration of the domain name and we will be seeking to cancel such registration through ICANN.

In addition, the website you have created at www.klymaxx.com is replete with false and misleading information. Some examples of the false claims contained on the website include the following:

1. The initial page implies that your new group going by the name "Klymaxx" " . . . is the world's only all-female Billboard-charted funk band, with such hits as "Meeting in the Ladies' Room," "The Men All Pause," and "I Miss You," the #3 Billboard song of 1986." While all of those claims are true for the genuine group "Klymaxx," none of them apply to your group. To our client's knowledge no song recorded by your group has charted on Billboard.

2. The opening page on your website also contains the statement: " . . . now they're back . . . and ready to rock your world!" Since you are the only member of the genuine group "Klymaxx"

Ms. Cheryl Cooley
May 14, 2003
Page 3

involved in this new group, the statement "they're back" is false and misleading and clearly intended to capitalize on the good will and talents of the genuine group "Klymaxx."

3. In the "About Klymaxx" section of your website you devote most of the site to a recitation of the history and accomplishments of the genuine "Klymaxx" and make references to its musical accomplishments. However, the clear implication of the site is that the two groups are one and the same, which simply is untrue and deceptive.

4. In the biographical section of the website, your description of your role with the genuine "Klymaxx" is at best dubious and at worst simply untrue. Touting yourself as "the cohesive force" and the member of the group able to "see the bigger picture" has, according to our client, no basis in reality.

Your website lists a number of live performances scheduled for your new group. It is our client's intention to contact each and every venue listed on your site to notify them that your group is not "Klymaxx" and should not be confused with the genuine "Klymaxx."

You should also be aware that our client has contacted several of your former bandmates to discuss with them your current activities. I am authorized to state that Bernadette Cooper and Lorena Stewart, two of the founders of "Klymaxx," take the same position as Ms. Irby.

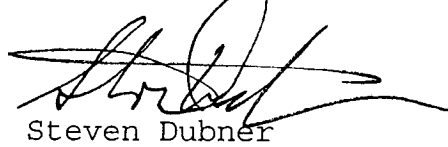
For the reasons set forth above, our client demands that you immediately cease and desist all unauthorized use of the name "Klymaxx" for your musical group, in advertising or otherwise. Having been put on notice of our client's rights, all further use of the name "Klymaxx" will be deemed a willful infringement of the mark.

If you have any questions concerning the foregoing, you may contact the undersigned. Our client specifically requests that all communications from you or your attorneys be directed to us, rather than to Ms. Irby directly.

Ms. Cheryl Cooley
May 14, 2003
Page 4

Sincerely yours,

HIGGINS & DUBNER



Steven Dubner

SD/cab

cc: Ms. Joyce Irby
Ms. Bernadette Cooper
Ms. Lorena Stewart
Ms. Lynn Malsby
Ron Sweeny, Esq.



FW: Klymaxx New Years Eve - NOT

Tuesday, December 27, 2005 4:02 PM

"Shawnee Cervantes" <SCervantes@bmpradio.com>

MarsTalent@aol.com

"Klymaxx!" <klymaxx@pacbell.net>

Wendy:

Please explain the email below?

I am writing on behalf of Bernadette Cooper, Lorena Stewart, Joyce Irby and myself, Lynn Malsby - the original members of Klymaxx.

Through the sharp eyes of a friend in the San Antonio area, we have been made aware that "Klymaxx" is playing at Sunset Station this coming New Year's Eve. You may not be aware, but the band you have contracted with is most certainly not Klymaxx. Our old guitarist Cheryl Cooley has

hired contract musicians to go out and play our hits. While we understand that

anyone can play our music, they cannot BILL themselves as Klymaxx legally.

We have pending legal action against Cheryl, as such.

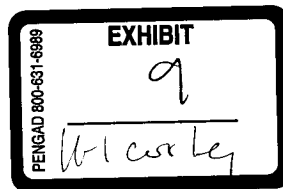
While we do not expect you to take any action at this late date, do know

the fans know. We see thousands of emails from them on an ongoing basis indicating such.

Should you wish to contact the original members of Klymaxx, kindly use our emails below.

Thank you.

Lynn
Lorena
Bernadette





The Real "Klymaxx"/

"xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx" <adventureartent@gmail.com>
"Klymaxx!" <klymaxx@pacbell.net>

Friday, August 10, 2007 12:47 AM

-----Inline Attachment Follows-----

Cheryl please review, speak to this woman and take care of it immediately. In no uncertain terms does the KAWMF want any part of this situation. We are about to do a new wave of advertising and I want a resolved band name on it.
Weez

i got this email today. i thought i'd let you all decide how to approach this
-----Original Message-----

From: Bernadette Cooper [mailto:girlisfunky@gmail.com]
Sent: Thursday, August 09, 2007 6:40 PM
To: industry@lawmf.com
Subject: The Real "Klymaxx"

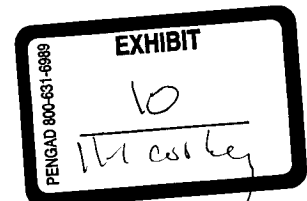
Hello,

My name is Bernadette Cooper founder of the group "KLYMAXX." I am writing you regarding the band you have hired that is using the name "KLYMAXX". They are not the real "KLYMAXX." We have been involved in a very long dispute an legal battle over this matter. Cheryl Cooley has no right to use the name "KLYMAXX." She tried to steal the name by copyrighting and was denied, she also has been served legal papers. On the vh1 special, she promised us and the world she would stop portraying herself as the real "KLYMAXX" but to no avail!

This is false advertisement and very misleading to our fans.... it is Fraud!! The real "Klymaxx" is on the road performing. I understand your position you may have not known about this. My solution is to simply advertise her group as either UNRULEY COOLEY(the name she was using but couldn't get work so she went back to using "Klymaxx") or Cheryl Cooley formally of "KLYMAXX". This way the public will know which band it is.

Really appreciate your celebration of women in music and hope we can resolve this matter.

Continued success,
Bernadette Cooper
(46) 436-5430





September 23, 2008

VIA EMAIL: klymaxx@pacbell.com
CONFIRMATION BY MAIL
RETURN RECEIPT REQUESTED

Cheryl Cooley
5807 Pickford Street
Los Angeles, CA 90078

Re: CEASE AND DESIST FROM USE OF THE KLYMAXX TRADEMARK

Dear Ms. Cooley:

This firm represents Ms. Bernadette Cooper and Klymaxx LLC in connection with trademark and other matters. We are writing regarding your use of the KLYMAXX trademark.

As you are aware, Ms. Cooper is the founding member and driving force behind the band KLYMAXX. She formed the band in the late 1970's and personally developed the highly unique and distinctive name KLYMAXX. As you know, as a former member of the band, KLYMAXX attracted a great deal of attention, secured a recording contract and went on to achieve great success on the Billboard charts.

After her solo career, Ms. Cooper, along with Joyce Irbly and with approval of the partners of Klymaxx LLC have for several years again been recording and performing under the name KLYMAXX. Since 2003, Ms. Cooper and Ms. Irbly have actively used and promoted the KLYMAXX name and trademark. In addition, Ms. Cooper and Ms. Irbly also own federal trademark application no. 77/571,759 for the KLYMAXX mark. We expect this application to mature to registration in due course.

As you must no doubt be aware, Ms. Cooper has invested a great deal of time and effort promoting her band KLYMAXX and in building its distinguished reputation. She is the lifeblood of the band and has devoted her career to this endeavor. As a result of her extensive creative efforts, the KLYMAXX name and trademark embodies substantial and valuable goodwill.

It has once again come to our client's attention that you are performing under the name KLYMAXX, leading off the original band's success, misleading the public and portraying your band as the original KLYMAXX band when it is indisputably not the original. Your continued performance as a band holding itself out as KLYMAXX is confusing the public and the fans of the original KLYMAXX band and tarnishing the reputation of the real band KLYMAXX. By this letter we are placing you on formal notice of these facts. Thus, any continued infringement will be considered willful.

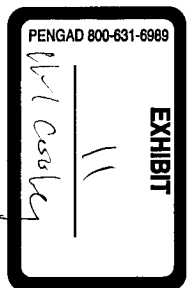
Please be advised once again that as the founding member and inspiration behind the band, Ms. Cooper along with Ms. Irbly owns *all* rights and title in and to the trademark KLYMAXX. As my client has substantial nationwide trademark rights in KLYMAXX based on use since the late 1970's and based on her federal trademark application, your use of the identical name for identical services is causing confusion among consumers as to the source and/or sponsorship of your services and tarnishing the reputation of the true band KLYMAXX.

In the event that there is any misunderstanding on your part as to the serious consequences and unlawfulness of infringing on the mark of another, please understand that this is a mark in which my client has been involved since its inception and has invested substantial money and efforts in branding for more than 30 years. Your performance under the identical name, passing yourself off as the original band KLYMAXX clearly causes confusion as to the source, sponsorship or affiliation of your services in violation of Section 43(a) of the federal Lanham Act, 15 U.S.C. § 1125(a). Specifically, this federal statute prohibits a person from using in commerce any term or false designation of origin which "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person." See also *White v. Samsung Electronics America, Inc.*, 971 F.2d 1395 (9th Cir. 1992); *Allen v. National Video Inc.*, 610 F. Supp. 612 (D.C.N.Y. 1985).

Ms. Cooper and Ms. Irbly will not, under any circumstances tolerate this continued unlawful and infringing behavior and intend to hold you liable for your conduct, including the disgorgement of all monies received from the unauthorized use of the trademark. We demand that you immediately:

- Cease all public performances in the United States or elsewhere under the trademark KLYMAXX;
- Cease all use of the trademark KLYMAXX in connection with the advertising, promotion of your services, including removing any reference to KLYMAXX on your website and in any printed, audio or video promotional materials and forward any and all such materials to us for their immediate destruction;
- Recall all merchandise bearing the KLYMAXX trademark to all parties to which it has been delivered and forward the same to us for its immediate destruction;

KL YMAXX, LLC, 5807 Pickford Street, Los Angeles, CA 90078
Attn: Cheryl Cooley
Tel: (310) 441-1111
Fax: (310) 441-1112
www.klymaxx.com



It is entirely in your hands to ensure that this matter is resolved amicably through immediate action. We look forward to your written response by October 7, 2008 that you will resolve this matter as outlined above. Please be advised that my client is fully prepared to take any and all action necessary to put a stop to this infringement and avoid any additional customer confusion and damage to its reputation, including filing a lawsuit against you and all parties and individuals who have been actively involved in these unlawful activities, seeking preliminary and permanent injunctive relief, treble damages, statutory damages and attorney's fees. Your prompt attention to this matter will prevent the need for further legal action.

Sincerely,

Jamie R. Sheldon

Jamie R. Sheldon, Esq.

cc: Bernadette Cooper, Klymaxx LLC
Joyce Ivey, Klymaxx LLC
Sandy Shepard, Litigation Counsel
Buzz Willis

Jamie R. Sheldon Esq.
741-A McCloy Street, Suite 105 • Oakland, CA 94624
510.772.5745 (office and fax) • jamie@jrsllaw.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHERYL COOLEY,

Opposer,

vs.

No. 91189474

BERNADETTE COOPER and JOYCE
IRBY,

Applicants.

~~~~~

**DEPOSITION OF**  
**CHERYL COOLEY**

**VOLUME II**

March 22, 2011  
10:01 a.m.

1875 Century Park East, Suite 500  
Los Angeles, California

Megan M. Grossman, CSR 12586



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CHERYL COOLEY,

Opposer,

vs.

No. 91189474

BERNADETTE COOPER and JOYCE  
IRBY,

Applicants.

~~~~~

DEPOSITION OF CHERYL COOLEY
VOLUME II

Tuesday, March 22, 2011

10:01 a.m.

1875 Century Park East, Suite 500
LOS ANGELES, CALIFORNIA

Reported by Megan M. Grossman, CSR 12586

APPEARANCES OF COUNSEL
(By Telephone)

For Opposer:

LAW OFFICES OF JACK F. SCHERER
JACK F. SCHERER, ESQ.
241 West 11th Street
New York, New York 10016
(212) 421-7140
jscherer@jfsny.com

For Applicants:

LAW OFFICES OF JAMIE SHELDEN
JAMIE SHELDEN, ESQ.
1760 Suite F
PMB No. 220
Airline Highway
Hollister, California 95023
(858) 777-5545
jamie@justtrademarks.com



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EXAMINATION

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* * *



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EXHIBITS

INDEX TO EXHIBITS

MARKED

(No Exhibits Marked)

* * *



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1 LOS ANGELES, CALIFORNIA;
2 TUESDAY, MARCH 22, 2011; 10:01 A.M.

3
4 CHERYL COOLEY,
5 having been first duly sworn,
6 testifies as follows:

7
8 EXAMINATION

9 BY MS. SHELDEN:

10 Q. Thanks, Ms. Cooley, for joining us
11 again. As I was mentioning to Jack, this should
12 just take a couple of minutes because I just have
13 a few quick questions.

14 Let's start, if you can turn to
15 Page 5 in the -- well, I am assuming you have the
16 original transcript of the deposition that took
17 place back in November?

18 A. Yes, I do.

19 Q. Okay. Good. On Page -- starting on
20 Page 5 of the transcript down toward the bottom,
21 Lines 23 through 25, and then continuing on to
22 Page 6, you mention that Stewart, Grider, and
23 Malsby -- and that's referring to Lorena Stewart,
24 Robbin Grider, and Lynn Malsby -- quote, "joined
25 with the opposer within opposition," end quote.



1 My question for you is, did either
2 Stewart, Grider, or Malsby sign the notice of
3 opposition?

4 A. There was a letter that they sent in
5 which they stated that they opposed the trademark
6 with Cooper and Irby.

7 Q. Right, and I am aware of that. But
8 the actual notice of opposition itself that was
9 filed with the trademark and appeal board, did
10 they sign that notice of opposition?

11 MR. SCHERER: If I may counsel, no,
12 there was never any signing by them.

13 BY MS. SHELDEN:

14 Q. Okay. And then did either Stewart,
15 Grider, or Malsby pay the notice of opposition
16 filing fee with the trademark filing and appeal
17 board?

18 MR. SCHERER: Again, counsel, if I
19 may, no, they did not pay anything.

20 BY MS. SHELDEN:

21 Q. Same sort of question. Are either
22 Stewart, Grider, or Malsby formally named as
23 opposers is the present opposition?

24 MR. SCHERER: Again, counsel, if I
25 may, they are not formally named.



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1 BY MS. SHELDEN:

2 Q. And then finally, do either Stewart,
3 Grider, or Malsby currently still, quote, join
4 with you in the opposition, end quote, as of
5 today's date?

6 A. Well, I mean there is no paper
7 written. I'm not sure I understand the question.

8 Q. Well, you know, you mentioned that
9 they did write this letter back in 2009. It is --
10 let's see -- Opposer's Exhibit 3, I believe, the
11 letter from Lynn Malsby of February 26, 2009,
12 stating that they, quote, unquote, joined in the
13 opposition. Is that still current to the best of
14 your knowledge?

15 A. To the best of my knowledge, yeah, it
16 still stands true, this letter. It's a letter
17 from her. I haven't heard anything any different
18 from her.

19 MS. SHELDEN: Okay. That's all I
20 have, Jack.

21 MR. SCHERER: So that's the end of
22 the cross-examination?

23 MS. SHELDEN: That is.

24 MR. SCHERER: Thank you.

25 Cheryl, thanks very much.



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1 Madam Court Reporter, thank you very
2 much.

3
4 (Whereupon, at the hour of 10:05 a.m., the
5 proceedings were concluded.)

6 oo0oo
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REPORTER'S CERTIFICATION

I, Megan Grossman, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that said testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 6 of April, 2011.

H. Meyer Grossman

Megan Grossman, CSR No. 12586



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DEPOSITION ERRATA SHEET

Assignment No. 380964

Cheryl Cooley

vs. Bernadette Cooper and Joyce Irby

DECLARATION UNDER PENALTY OF PERJURY I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the above captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the 14th day of April
, 2011 ,


CHERYL COOLEY

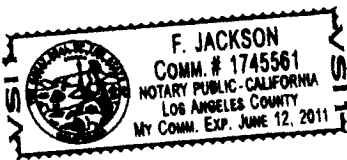
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } ss.

On April 14, 2011 before me, F. Jackson, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Cheryl Cooley,
Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document: Deposition

Document Date: March 22, 2011 Number of Pages: 32

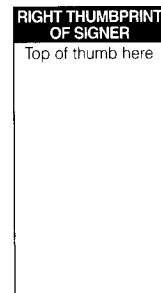
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: Cheryl Cooley

- ☒ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: self



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| accurate | captioned | corrections | 21:5 25:9 | 25:9,14 |
| 26:12 | 26:11 | 26:13 | E | formally |
| actual | Century | COUNSEL | East | 22:22,25 |
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| Airline | CERTIFICATIO | 18,24 | either | 25:11 |
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| and/or | 25:1 | 21:12 | 23:2 | Good |
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| ANGELES | 25:5 | 24:1 | 21:25 23:4,21 | Grider |
| 17:21 21:1 | certify | c r o s s - | entire | 21:22,24 |
| APPEAL | 25:7 | examination | 26:10 | 22:2,15,22 |
| 17:2 22:9,16 | Change | 23:22 | ERRATA | 23:3 |
| APPEARANCES | 27:2,3,4,5, | CSR | 26:1,14 27:1 | Grossman |
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| Applicants | 11,12,13,14, | current | ESQ | H |
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| Assignment | 19,20,21,22, | currently | EXAMINATION | 23:17 |
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| assuming | 5,6,7,8,9, | D | Exhibit | 23:17 |
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| aware | 14,15,16,17, | 23:5 27:24 | EXHIBITS | 23:17,18 |
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| back | changes | 26:18 | F | herein |
| 21:17 23:9 | 26:13,16 | DECLARATION | 18:5,12 | 25:11 |
| believe | CHERYL | 26:8 | February | hereof |
| 23:10 | 17:4,14 19:2 | declare | 23:11 | 26:15 |
| BERNADETTE | 21:4 23:25 | 26:8 | fee | Highway |
| 17:8 26:6 | 26:5,22 27:25 | DEPOSITION | 22:16 | 18:13 |
| best | 28:25 | 17:14 21:16 | filed | Hollister |
| 23:13,15 | concluded | 25:10 26:1, | 22:9 | 18:14 |
| BOARD | 24:5 | 10,14 27:1 | filing | hour |
| 17:2 22:9,17 | 21:21 | 28:1 | 22:16 | 24:4 |
| bottom | COOLEY | different | finally | I |
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| | 28:25 | | | |



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1875 Century Park East
Los Angeles, CA 90067
www.esquireolutions.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the following:

Transcript of the Deposition of Opposer, Cheryl Cooley, Volume II

was served upon Applicants on April 25, 2011, by delivering a copy of same to FedEx for delivery to:

Jamie Shelden. Esq.
1760 Suite F
PMB No. 220
Airline Highway
Hollister, CA 95023

Dated: May 13, 2011



Jack F. Scherer